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NONDESCRIPT WOMEN:
A STUDY OF THE JUDICIAL
CONSTRUCTION OF FEMALE
LAWBREAKERS AS ABNORMAL
CRIMINALS AND ABNORMAL WOMEN

VOLUME 1

THESIS

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Finally, I dedicate this study to the memory of my mother, who experienced both the joy and the suffering that comes from struggling to defy description.

ABSTRACT OF THESIS

The thesis of this study is that 'nondescript women' are a muted group within the criminal justice system. They are subject to multiple discursive oppression which is subtle and sophisticated. Their oppression is dependent not on their active and constant domination by one group (men) in society but by the inability/refusal of a number of authorised definers or agents of signification (who may, empirically, be either men or women) to hear or listen to communications which are incongruent with professionally legitimated modes of expression about female conditions of existence. Consequently, the women are disqualified as speakers about their own condition and are, instead, strategically constructed as the programmable objects of professional discourses. They are effectively offered a contract which promises to minimise the consequences of their criminality by rehabilitating them within the dominant discourses of femininity (that is, domesticity, sexuality and pathology). Despite these programmes of feminization, nondescript women, it is argued, are also those women who attempt to resist such construction by exploiting the contradictions of official discourses. As a result, the 'experts' find such women impossible to define and they appear to be beyond definition both as women and as criminals. They are, in effect, seen to be nondescript. Yet, whilst much of the women's resistance is individualistic, inconsistent and, in some senses, self-destructive, it has the important effect of undermining the authority of official discourses and keeping open the possibility of the creation of new knowledge about them - both as women and as lawbreakers.

INTRODUCTION

WOMEN, CRIME, PSYCHIATRY AND SOCIAL WORK

Genesis of a Thesis

This thesis is about lawbreaking or otherwise deviant women who in the interstices between the discourses of law, sexuality and psychiatry are constituted as being beyond description. The thesis is not, therefore, primarily about women in prison or women in mental hospital. Nor is it about all women who break the law or all women who consult their general practitioner about 'nerves'. It is about those women who, because they are not 'bad enough' or 'mad enough', may be found at any given time 'in place' yet 'out of place' in prison, in hospital, at the doctor's - and frequently on probation. It is about the women that nobody wants (Carlen, 1983) and whom nobody can adequately describe. It is about women who are cited as being forever twixt that criminality and madness which their very existence questions. It is about those sites whence emanate the descriptions that render some lawbreaking women nondescript. In short, it is about judging certain deviant women - and finding them always, already, forever lacking a place in official scripts.

In the beginning, I intended to write a rather different thesis. Having worked for a number of years as a Probation Officer, I was conscious of a small, but disproportionately demanding, group of women clients who did not fit into the two traditional stereotypical categories available for describing female lawbreakers, namely, 'the pathetic menopausal shoplifter' and 'the sophisticated criminal' (Worrall, 1981). I was conscious that these other, more difficult to define women occupied much of my time and energy because I could identify neither their needs nor the remedies for those needs in any way which satisfied either

me or them.

They were women who were variously described as 'inadequate', 'demanding', 'manipulative', 'aggressive'. Whilst Elizabeth Wilson (1977) might see them as 'feminist' clients, challenging the state's definitions of them and seeking to take control of their own lives, I was left with the uneasy feeling that their behaviour exemplified the 'defences of the weak' (Mathiesen, 1972) - mere shadow-boxing by the powerless. I was conscious that I was not alone in my dilemma. Social workers in Social Services Departments, solicitors, psychiatrists, magistrates - all had, from time to time, been exercised by the demands to define these women who appeared to defy description. Those demands emanated not only from the discourses within which I and my fellow professionals considered ourselves accountable, but from those same discourses within which the women themselves had been constituted. Indeed, it was their apparent inability to define themselves outside of the needs, demands and definitions of other people that impressed me above all. They seemed to lurch continuously between two states of consciousness - the sense of obligation to fulfil the needs of husbands, lovers, mothers, children, neighbours and the sense of outrage (at times suppressed into depression) that their own needs were not being met. And in the eyes of the agents required to define them they more often than not appeared to be nondescript.

But this realisation was of a purely (non) descriptive nature; I was left unable to explain either the 'how?' or the 'why?' of their plight. With Miller I believed that what they shared with all women was the absence of 'the right or the requirement to be full-fledged representatives of the culture' (1976: 76). But what made these women different from other women and what, if any, were the implications of that difference? At some stage in their careers, these women had broken

the law and had been found out, thus immediately acquiring a statistically elite status and exposing themselves to the gaze of those whose interweaving official and expert discourses inform the criminal justice system. Could it be that a study of this small group of female lawbreakers might throw into sharper relief the factors influencing the treatment and experiences of all women? Could the case of the non-descript female lawbreaker be usefully taken as a metaphor of womanhood?

I was conscious throughout this process that I did not want to make yet one more radical statement about 'female offenders'. I wanted, at one and the same time, to be both more specific and more general. I knew that nothing I could say would hold true for all female lawbreakers, that the range of their experiences would be as wide as that of any other group which becomes defined by its master (or mistress) status. The search for an empiricist truth, whether conservative or radical, would, I knew, prove futile. Instead, I thought that by using current knowledge about the ideological and material conditions and processes that overdetermine the lives of all women, I might be able to explain how and why this particular group of female lawbreakers is repeatedly seen as being beyond description. At the same time, I hoped too that a theoretically informed case-study would contribute further knowledge about the discourses within which conventional women are recognised as such.

The issue then became one of deciding how narrowly to draw that sub-group and my initial intention was to draw it very narrowly indeed. It seemed to me that there were very specific moments at which the discourses of law, sexuality and psychiatry could be seen to converge and those moments occurred for women a) when they became subject to Probation Orders with conditions of psychiatric treatment and b) when they became subject to Guardianship Orders. Analysis of the former would allow a direct examination of the relationship between psychiatry and

social work within the criminal justice system; analysis of the latter would allow additional examination of the criteria for, and implications of, redefining women lawbreakers outside the criminal justice system - the rules which include in or exclude from criminality. Within that framework, I saw myself being able to ask such questions as:

1. 'Under what conditions is lawbreaking by women defined as either wickedness or symptomatic of need'?
2. 'Under what conditions is mental disorder seen to be either the cause of female lawbreaking, or a diagnosis that is subsequent to or coincidental with that lawbreaking?'

I became quite excited by the possibilities of such an analysis until I consulted the criminal statistics and found that in 1981 a total of some 270 Probation Orders with conditions of treatment had been made nationally on women and no Guardianship Orders! It was immediately clear that any analysis of the use of Guardianship Orders on women would have to focus on their absence rather than their presence. It was also clear that obtaining a reasonable sample of psychiatric probation orders on women would, in itself, be an expensive and time-consuming task. I was fairly confident that my fund of good-will with the Staffordshire Probation Service would enable me to have access to material locally but I had no reason to suppose that other areas would be equally responsive. In fact, my inability to obtain any positive response from Staffordshire Social Services Department in respect of this research was another factor which caused me to reconsider my empirical plans.

It was then that I began to realise that the absence of clearly identifiable material and the problems of obtaining access to such material as was identified might be an important feature of the issues I wanted to explore, rather than an indication of their non-existence. If one is arguing that certain women are written out of certain official

scripts, then difficulty in detecting their existence - or any official recognition of their existence - should come as no surprise.

This realisation had a liberating effect on me and I thereafter resolved to broaden the definition of the group of women in whom I was interested, thereby allowing the people I intended to approach more scope for presenting their own criteria for defining those troublesome women who seemed to elude description. It later became apparent that this had been the right decision, for one of the things I quickly discovered when I started my interviews was that the psychiatric probation order is not always imposed on the most disturbed or troublesome women nor, conversely, are the most disturbed and troublesome women always described in the terminology of psychiatry. In the letter which I sent to the sample of Probation Officers (see Appendix II) I indicated that I wanted to talk about women who had been diagnosed as mentally disordered and other women clients. At the beginning of the interviews I was frequently greeted with a denial of the existence of the former ('I don't think I've got anyone you'd be interested in'). Nevertheless, on being prompted to talk about other women who might be difficult to work with, there was rarely a pause in the ensuing monologue. My task, I soon appreciated, was not to be the relatively straightforward one of positivistically establishing 'the facts' that might account for the homogeneity of a particular, pre-defined sub-group of lawbreakers, namely, women who had been diagnosed as mentally disordered. Rather, I had to extrapolate from an abundance of common-sense and professional observations:

- (1) the rules by which differential diagnoses and judgements are made;
- (2) the material conditions of existence within which those rules acquire meaning; and

- (3) the material consequences of those rules for the women who are constructed as the objects of various, often contradictory, discourses.

Originally, I had intended to use a combination of statistical analysis and structured questionnaires (both mailed and personal) to elicit both factual and more qualitative information about the descriptions of mentally disordered female lawbreakers, (see Appendix II) but such a methodology seemed to be increasingly irrelevant and restrictive. Instead, I decided to use such statistics as I could obtain simply as a means of identifying the people I most wanted to talk to and to use a far less structured interview schedule or mental checklist (on Appendix II) of areas I wanted to cover in interviews. It seemed less important to ensure consistency of replies to a pre-structured schedule than to be able to trace the spontaneous logic of and relationship between ideas present by subjects with a minimum of prompting. The search was not for a set of essential criteria for determining definitions of and attitudes to particular women lawbreakers. Rather, it was an attempt to unearth, to 'discover' the mechanisms by which

- (1) similar words and ideas can be used to contradictory effect and
- (2) apparently conflicting discourses have similar material consequences.

Such a programme did not involve an investigation based on either empiricist techniques or probability theory (see Appendix I for further explanation of the methodology employed).

Aim of Thesis: Nondescript Women

This thesis is specifically about a group of female lawbreakers who constitute a 'muted group' within every discourse which claims

privileged knowledge about female lawbreakers. I refer to these women as 'nondescript'. They have been 'written out' of all official scripts because they persistently fail to be appropriated by the descriptive categories available to the speakers of expert discourse. At a more general level, the thesis not only draws attention to the needs of one particularly neglected group within society, it also charts some of the complexities, contradictions and coherences of the wider process which is all too often simplistically articulated as 'women's oppression'.

Mutedness

The theory of mutedness was first proposed by Edwin Ardener (1975) and developed by Shirley Ardener (1975; 1978) to account for the refusal/inability of dominant groups in societies to 'hear' or 'listen to' communications from subdominant groups:

'The theory of mutedness....does not require that the muted be actually silent. They may speak a great deal. The important issue is whether they are able to say all that they would wish to say, where and when they wish to say it. Must they, for instance, re-encode their thoughts to make them understood in the public domain? Are they able to think in ways which they would have thought had they been responsible for generating the linguistic tools with which to shape their thoughts? If they devise their own code will they be understood?'

(Ardener, 1978: 21)

Members of muted groups, if they wish to communicate, must do so in terms of the dominant modes of expression. But dominance, within the theory of mutedness, does not require the active domination of one group by another, nor does it require any one individual's structural position in a society to be constant. It is dependent, rather, on a 'sub-system, or particular universe, of relevance at any one time' (Ardener, 1978: 28), whence emanate:

a) ideas about 'reality' and who is authorised to define it;

- b) the blunting of self-perceptions through the encouragement of 'trivial' concerns and small scale pleasures;
- c) the exclusion of muted groups from 'public' space.

The subtlety of such dominance ensures that rebellion is confined to 'minor deviations' which 'can become charged with emotive force' for the participants but may exert little influence on the dominant group (Ardener, 1978: 28-9).

Chapter One sets out the fundamental theoretical project of this thesis, the deconstruction of the various discourses which dominate the particular universe or sub-system of relationships occupied by a particular group of women who break the law. In Chapter Two, the parameters or boundaries of those discourses are identified. In Chapter Three, the women on whom this study is based are introduced. The accounts of their own experiences are examined to elucidate the rules by which they give expression to those experiences and the extent to which they are able to exploit the contradictions in the dominant discourses within which they are constructed. Chapters Four to Seven analyse the unique and often competing appropriations and interpellations of dominant discourses by magistrates, solicitors, psychiatrists and probation officers. The consequences for the women being studied are also examined. Chapter Eight summarises the preceding chapters and reiterates the theoretical and practical implications of the study.

Thesis

It is argued that the discourses of the medical, judicial and welfare personnel whose job it is to assess, judge, defend, treat and punish nondescript women are constituted by the ideological and material conditions of their jobs in the following ways:

1. Magistrates' discourse in general is constituted by the ideology of common sense and the material conditions of a privileged existence.

Additionally, women magistrates are required simultaneously to claim (for the purposes of authoritative understanding) and deny (for the purposes of authoritative attribution of culpability) similarity with female lawbreakers.

2. Solicitors' discourse is constituted by the ideology of legal representation which requires solicitors to repackage female lawbreakers according to typifications of 'normal' women which can be discursively recognised by 'magisterial common sense'.

3. Psychiatrists' discourse is constituted by the ideology of forensic medicine, which requires and authorises psychiatrists to make wide-ranging medical, moral and judicial judgments of female lawbreakers in order to render them describable for the purposes of recognition by 'magisterial common sense'. At the same time, this ideology makes women's eligibility for treatment both ideologically and materially dependent on a far narrower range of gender-stereotyped classifications.

4. Probation officers' discourse is constituted, on the one hand, by the competing discourses of magistrates, solicitors and psychiatrists who, having failed to describe these women adequately within their own discourses, often reach consensus about the competency of probation officers to describe them. On the other hand (and simultaneously), probation officers' discourse is constituted within a social work ideology, which requires and authorises them both to care for and to control women as key figures in the maintenance of the nuclear family (whether or not the women are, in fact, members of such families).

Despite the complexities and contradictions of these competing discourses, their consequences for certain female lawbreakers are coherently and systematically oppressive. A recognizable (though not definable) group of female lawbreakers is therefore consistently muted for the following reasons:

1. Nondescript women are subject to a multiple discursive oppression which requires that any investigation of their experiences be subjugated by the typifications of 'normal femininity' articulated by 'experts'.

2. As speakers about their own condition, these women are disqualified because of their inability and/or refusal to articulate the paradigms of domesticity, sexuality and pathology which dominate explanations of their behaviour.

3. Nondescript women are strategically constructed by judicial, medical and welfare discourses as the programmable objects of discourse and subjected to technologies which regulate their minds and bodies through power relations which are local and immanent. They are effectively offered a contract which promises to minimise the consequences of their criminality by rehabilitating them within the dominant discourses of femininity.

4. Resistance to such description tends to be individualistic, inconsistent and, in some senses, self-destructive.

Nevertheless, it is argued that such resistance has the important effect of undermining the authority of official discourses and keeping open the possibility of the creation of new knowledge about them - both as women and as lawbreakers. By exploiting the contradictions in the material and ideological conditions that render them 'nondescript', these women are able to wrest a limited degree of power from the dominant groups by whom they are muted.

PART I : THEORIES

CHAPTER ONE

THEORETICAL PRE-CONDITIONS FOR THE DECONSTRUCTION OF DISCOURSE

Introduction

This chapter sets out the theoretical framework within which the process of knowing (Foucault, 1972) about female lawbreakers is being located in this thesis. The starting point of this chapter is Burton and Carlen's assertion that 'discourse analysis has displaced epistemology' (1979: 15) and this statement is examined under the following headings:

Displacing Epistemology

Mead and the Significant Symbol

The Characteristics of Signs

Claiming Privilege: The Legacy of Sovereignty

The Problem of Recognition

Strategies, Programmes, Technologies and Resistance

Conclusion

Displacing Epistemology

Epistemology has been concerned with the seeds of truth; it has asked the question, 'where does knowledge come from?'. It has struggled with distinctions between the natural and the social world, between causes and reasons, between Positivism and Verstehende, Functionalism and Dialectical Materialism. It has asked whether knowledge is obtained by observing behaviour or understanding action, by accretion or by rational thought. It has asked whether it is indeed possible for humans to study themselves at all or to have a full and absolute knowledge of themselves. In sum, it has had three main concerns:

1. The demarcation of science from non-science (of truth from falsehood).
2. The relationship between theory and observation.

3. The conundrum of a knowing subject producing objective knowledge.

Discourse analysis has displaced these concerns by challenging the ontological concept of 'truth'. Its search is not for the Hand which primordially and teleologically planted the seed. Rather it is a search for the underlying structures whence emanate the rules that authorise claims 'to know'. Such authority must itself always be under erasure, for it must always be informed by some other authority. Hence one talks of a continuing process of discovery and the metaphorical vocabulary of archaeology becomes more appropriate than that of botany.

As opposed to dealing with questions of truth this thesis struggles with the process of signification and the position within that process of the speaking subject. It searches for a method of analysis which reaches beyond what is said to be, to an understanding of what informs a particular claim to know. Its aim is to unhitch itself from the collusive search for properties, essences and unities; instead, it asks, why the need for coherence in representation? Yet, by asking that question, privilege is immediately claimed for its own discourse. The trap is unavoidable and can only be acknowledged as the (essential?) contradiction which underlies any attempt to legitimate contradiction. As Kristeva (1975) says:

'Everything in current research that is solid and intellectually adequate impels those pursuing it to stress the limits of their own metalanguage in relation to the signifying process.'

It is nonetheless recognised that stressing the limits of its own metalanguage does not automatically render this research solid and intellectually adequate!

No claims are made here that the frontiers of discourse analysis are being extended. Rather, this thesis appropriates from a number of writers

a bricolage of concepts and analytical tools which are useful in the kind of analyses undertaken here. These analyses have to do with the drawing of distinctions, the organisation of differences and the recognition of contradictions.

'It is essentially a distinction between institution and event, between the underlying system which makes possible various types of behaviour and actual instances of such behaviour.'

(Culler, 1976: 33)

It is from writers such as Foucault, Saussure, Kristeva, Coward and Ellis, that tools have been appropriated - from the expositions of archaeology and semiology.

'By archaeology Foucault is referring to a method of analysis that sites knowledge and its subjects by excavating the rules that form a particular discourse and exclude others (rules that have more to do with power strategies than scientific validity).'

(Hewitt, 1983: 68)

'Semiology is thus based on the assumption that insofar as human actions or productions convey meaning, insofar as they function as signs, there must be an underlying system of conventions and distinctions which makes this meaning possible.'

(Culler, 1976: 91)

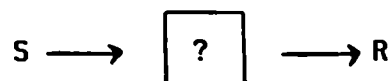
This thesis thus starts from the premise that no human action is intrinsically meaningful and that no human being is endowed with pre-given properties or essences which transcend the social system and determine his/her lived experience. It says 'No' to those idealist forms of knowledge which depend on notions of 'human nature'. It argues that the human subject is constructed in language through social practices which have conventional rather than 'natural' meanings. It argues that social practices, as well as linguistic units, can be read as signs.

Mead and the Significant Symbol

The rejection of positivistic explanations of human behaviour did not immediately lead away from the traditions of epistemology. Reacting against notions of truth as unchanging and monolithic, the notion of truth as a pluralistic realism was attractive. Truth, according to Symbolic Interactionism (with its roots in Pragmatism) is a matter of perspective (Rock, 1973; Plummer, 1979). It resides neither in subject nor object but in their interaction. Knowledge is not the product of a priori reasoning, nor does it inhere in the nature of phenomena themselves. Knowledge is:

1. Dialectic - for it is contradictory and uncertain;
2. Indeterminate - for it is dependent on changing conditions and contexts;
3. Pluralistic - for it is scattered among the minds of those who ask questions;
4. Exploratory - for it cannot be reduced to axioms but is a 'mosaic' built up through exploration.

Knowledge can never be total - it is better described as a process of 'knowing'. Central to this knowing process is the 'knowing subject' - the SELF that interacts with society. Symbolic Interactionism draws its concept of the self from the work of George Herbert Mead (1934). Originally a behavioural psychologist, Mead concluded that the stimulus - response model was inadequate to explain the behaviour of humans. Humans intervene between stimulus and response:



That intervention:

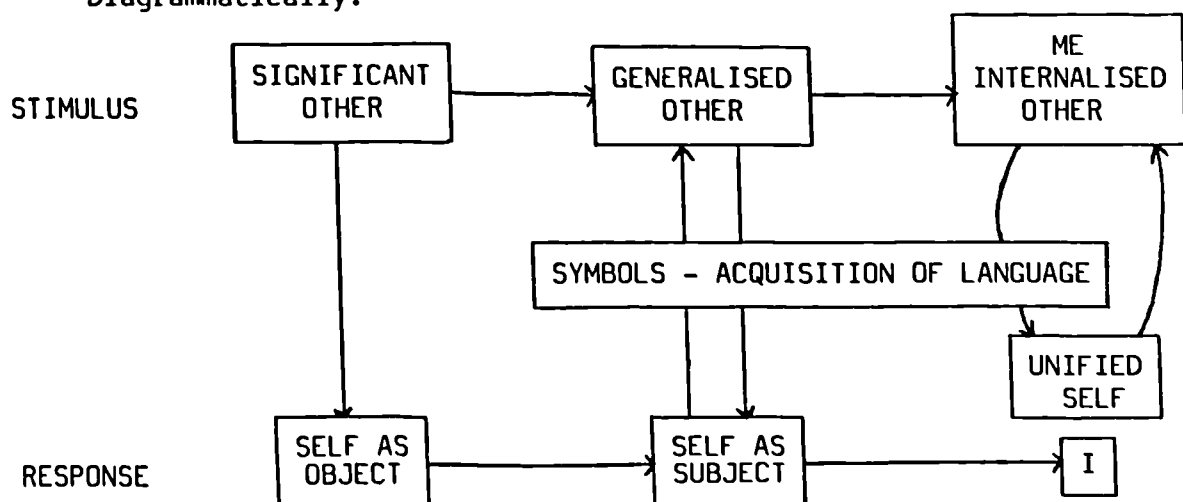
- a) gives meaning to both stimulus and response and
- b) frees the actor to respond other than physically.

It is none other than the intervention of the symbolic - the intervention of language. Unlike animals, humans interact symbolically, interpreting stimuli and acting (rather than behaving) in response. But the emergence of the self is a more complex process than this. Initially, the child responds behaviourally to the adults in her life but without ascribing meaning to that behaviour. Gradually she begins to play certain roles in relation to significant adults - 'mummy', 'daddy' and 'baby' begin to have meaning, to imply rights and duties, to instil an expectation of certain responses in certain situations. But at this stage, the child still experiences herself only as an object in the world of other people. It is with the acquisition of language that the child begins to have a picture of her SELF. At this stage she begins to take on a variety of roles and to organise them into a system. She begins to see herself reflected in the actions of others towards her. She begins to realise that she can both influence and be constrained by her social environment. She begins to take into herself the role of the Generalised Other. And she begins to adjust her responses in the light of the responses she anticipates from her environment to act reflexively. By such a process, the 'I' and 'Me' aspects of the self develop.

'The "I" is the response of the organism to the attitudes of the others; the "Me" is the organised set of attitudes of others which one himself assumes.'

(Mead, 1934: 230)

Diagrammatically:



It is through this process of maturing that the individual comes to have a sense of herself as a 'whole' person:

'The reflexive character of self-consciousness enables the individual to contemplate himself (sic) as a whole; his ability to take the social attitudes of other individuals and also of the generalised other toward himself, within the given organised society of which he is a member, makes possible his bringing himself, as an objective whole, within his own experiential purview; and thus he can consciously integrate and unify the various aspects of his self, to form a single consistent coherent and organised personality. Moreover, by the same means, he can undertake and effect intelligent reconstructions of that self or personality in terms of its relations to the given social order, whenever the exigencies of adaptation to his social environment demand such reconstructions.'

(Mead, 1934: 269 - emphases added)

But the women with whom this study is concerned most certainly did not 'consciously integrate and unify the various aspects of (themselves) to form a single, consistent, coherent and organised personality' and that apparent failure implied yet more positivistic explanations of 'immaturity' and 'lack of socialisation'. Like humanistic Marxism, Symbolic Interactionism seemed to reduce problems of both society and the individual to a question of consciousness. Consequently, their resolution lay in the raising of (individual/social) consciousness and this would be done by increasing knowledge of the complexity of human interaction and its consequences. Such an analysis seems to be based on two fallacies:

1. Knowledge of itself leads to change.

2. The Self is potentially as powerful as the Other.

Underlying those two fallacies is a neglect of issues of power and structure. What in fact is neglected is any analysis of the interrelation between consciousness and the material world whence it emanates. The model of the social is 'a rational model of communication, participation and compromise' (Roberts, 1977: 102). This model, when internalised,

serves to lessen and/or devalue internal conflict, so that a self which is experienced as contradictory, inconsistent or incoherent, is viewed as pathological, rather than the product of social relations which are themselves the product of inequalities of class, race and gender.

Important though an analysis of symbols is to this study, such an analysis would be inadequate unless in some way it included an analysis of structure - of the rules that govern the use of symbols and the social structures from which these arise.

The Characteristics of Signs

The importance of structural linguistics to the study of social practices lies in the emphasis they place on the form, rather than the substance, of units (practices) and their relationship with each other within a system. Saussure's assertion that the relationship between the signifier (sound) and the signified (concept) is arbitrary, rather than natural, or inherently meaningful, allows an analysis of language (practice) which, freed from the obligation to search for causation, can explore the rules by which difference is organised and the effects of that organisation. It allows for a distinction to be made between 'la langue', the underlying set of forms which an individual assimilates when she learns language and 'parole', the particular selection of and use to which a speaker puts that language. The consequences of this distinction for the study of social practices is summarised by Culler (1976: 33):

'Study of the system leads to the construction of models which represent forms, their relations to one another, and their possibilities of combination, whereas study of actual behaviour or events would lead to the construction of statistical models which represent the probabilities of particular combinations under various circumstances.'

Having denied, however, the existence of any pre-given, 'natural' relationship between the signifier and the signified, the somewhat ironic

problem of the suspiciously 'essential' arbitrariness of that relationship arises. The speaking subject does not have complete freedom to endow her words or her actions with meaning. She is not the centre of meaning (knowledge). Words and actions acquire socially determined meanings which exist independently of the intentions of the particular subject who use those words or engages in those actions. It may be self-evident that there is nothing intrinsically polite about opening a door for a woman (Culler, 1976: 92) but any intention on the part of a male subject to ascribe politeness to his action would be futile in an environment where the act itself was assumed to be patronising. To understand the complexity of meaning that underlies such a ritual, one would have to go beyond the meanings articulated by the individual actors to an understanding of the relationships between conventions arising from idealist notions of chivalry and those arising from materialist discourses about women's oppression. Within those relationships one might identify any number of moments of signification - a process of signifying, involving a chain of signifiers.

The question which then arises is the extent, if any, to which the speaking (or knowing) subject plays any active part in that process. The subject has been 'decentred' but has she become totally powerless? Before addressing that question specifically, the other facet of the foundation of the methodology of this thesis - the relationship between power and knowledge - must be considered.

Claiming Privilege: The Legacy of Sovereignty

The process of freeing oneself from absolutist or sovereign thought is a difficult one. The desire to know is the desire for power but a distinction needs to be made between 'power' as a creative, generative, energetic force and 'power' as a superior, dominating and repressive

force. For Foucault, power is not something which is produced by institutions, laws and systems, but is something which inheres in all social relations. Its origins are local and immanent, and its circulation through the social body can be metaphorically represented by the circulation of blood by capillaries through the physical body:

'Power is everywhere; not because it embraces everything, but because it comes from everywhere.'

(Foucault, 1979: 93)

But the legacy of epistemology is the desire for a sovereign power. The more coherent the representation of knowledge, the more monarchical will the power achieved appear. Sovereignty is characterised by the search for 'an ideal, continuous, smooth text that runs beneath the multiplicity of contradictions, and resolves them in the calm unity of coherent thought' (Foucault, 1972: 155). In other words, paradox is simultaneously affirmed and denied; its surface appearance is acknowledged but its implications are repressed. 'Representation appears to render that which is absent present' (Cousins, 1978: 1).

As Hewitt (1983: 80) points out, sovereignty exists in both liberal and marxist thought. Chapter Two of this thesis illustrates the ways in which a number of conservative, liberal and radical discourses have claimed privileged (or sovereign) positions in relation to 'knowledge' about 'normal' and 'abnormal' women. Each discourse

'appears as an asset - finite, limited, desirable, useful - that has its own rules of appearance, but also its own conditions of appropriation and operation; an asset that consequently, from the moment of its existence (and not only in its "practice applications"), poses the question of power; an asset that is, by nature, the object of a struggle, a political struggle.'

(Foucault. 1972: 120)

But not only do those discourses relate paradoxically to each other, they contain within themselves discontinuities, ruptures, gaps, lacunae, which

remain unspoken or, if spoken, always-already subordinate. For example, it is the paradox of sexuality, that the categories of maleness and femaleness, 'are not simply categories which oppose each other on a neutral ground. They are set up in a "violent hierarchy", for they are already organised by the privileged term in relation to which the other term is both necessitated and subordinated' (Cousins, 1978: 4). Women are always-already lacking as not men. That which is a common condition of the paradox, whose inclusion would allow an inversion of the hierarchy - the oppression of women - is excluded. And, being thus excluded, such a condition loses its power to control the effects of discourse. Therefore, statements emanating from discourse are always iterable - they can always be 'read' in and out of a variety of contexts, elevated or demoted between levels, forever excusing and indicting. So it is that the discourse of psychiatry privileges clinicians to perceive any distressed female as 'sick', whether she accepts or rejects the female role, that is, whether she is depressed, incompetent, frigid and anxious or hostile, successful and sexually active (Chesler, 1974: 110). Likewise, such privilege enables the experts to differentiate, despite identical presenting symptoms, 'premenstrual syndrome from menstrual distress' and thus 'those women who are jumping on the bandwagon and falsely claiming premenstrual syndrome (as a mitigating factor in their crime) from the genuine sufferer, who is crying out for help and for a new chance in life' (Dalton, 1982: 13). Dalton's work, (described more fully in Chapter Two) in fact, provides a specific example of the complex relationship between medical and judicial discourse, which Foucault describes thus:

'Medical decision recognises absolutely the authority of the judiciary to define crime, to determine the circumstances in which it is committed, and the punishment that it deserves; but reserves the right to analyse its origin and to determine the degree of responsibility involved.'

(Foucault, 1972: 44)

A further example is provided by Carlen's discussion of the use by psychiatrists of the concept of 'psychopathic disorder' in relation to women lawbreakers:

'If they as psychiatrists do not know of any way of treating the 'disturbed' person who is also an offender then they will use their position as psychiatrists to deny illness and to make a judicial decision, a judicial decision which will, in fact, have penal effects.'

(Carlen, 1984: 4)

So the privileging of discourse is about the ascription of power. But how does that power have effectivity? Partly, because it operates in some secrecy but mainly because 'the representation of power has remained haunted by monarchy. In political analysis and thought, we have still not cut off the king's head' (Foucault, 1976: 117 quoted in Gordon, 1977: 17). The analysis of knowledge power as a ubiquitous force which is generated continuously within the relations of the social body remains a resistable and resisted analysis. In other words, epistemology - the search for the seeds of knowledge - is only slowly being displaced by discourse analysis (Burton and Carlen, 1979: 15).

Implicit within epistemology are the concepts of origin and exclusion:

'The category of original experience carries the implication that discourse is to function essentially as a recognition and repetition of pre-given significations.'

(Gordon, 1977: 15)

To ensure the 'infinite continuity of discourse' Foucault, 1972: 25) its boundaries have to be demarcated by 'practices of exclusion' (Gordon, 1977: 15). Examples of such practices are:

- the prohibition of certain topics (e.g. poverty in psychiatric discourse);

- the disqualification of certain individuals as speakers (e.g. women about their own gynaecology);
- the rejection of certain statements as illegitimate (e.g. prostitution as a convenient way of earning a living).

It follows that any attempt to analyse discourse has to challenge the legacy of sovereignty and question its plausibility by asking:

'Who (question of the author) has to say what (question of the object) to whom (question of the reader) in order to destroy which (question of the Other)?'

(Burton & Carlen, 1979: 33)

It is to the unpackaging of this question, and its implications for the position of the subject that this chapter now turns.

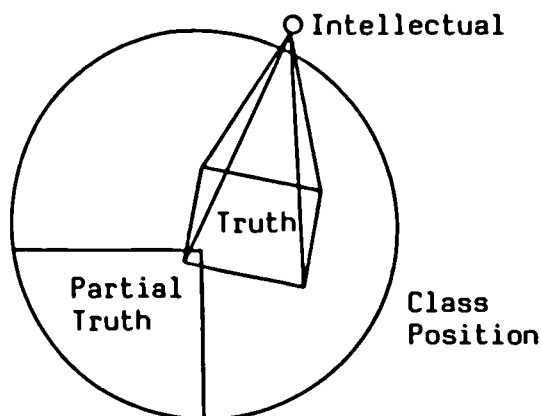
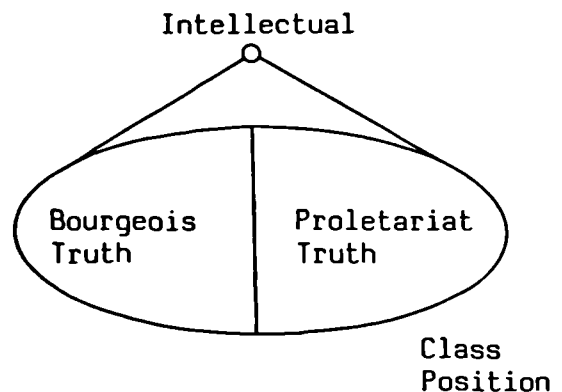
The Problem of Recognition

'Discourse analysis has....transformed the problem of ideology into the problem of Recognition.'

(Burton and Carlen, 1979: 19)

Epistemology conventionally positions ideology in opposition to knowledge (science), yet the exact relationship between ideology and knowledge remains elusive. As Coward and Ellis observe (1977: 2), the idealist assumptions underlying notions of free individuals who use the 'transparent, neutral milieu' of language to discover truths about a pre-existing, fixed universe are themselves characteristic of a bourgeois ideology which 'depends on notions of "human essence" which somehow transcend....the social system'. Such assumptions have been undermined by the development of Marxist analyses of history and the awareness of the constraining influence of the economic base of any society on the consciousness of its subjects and their representation of the real world. All such analyses have demonstrated the inseparability of ideology from knowledge but understandings of the nature of that dependency vary. For

some, there still exists a 'truth' which is ultimately knowable and recognisable, but that truth is consciously distorted by those whose interests are served by a false representation of the real world (Mannheim, 1960). For others, there exist two 'truths' - the bourgeois truth and the proletarian truth (Lukacs 1971). In both versions, the neutral intellectual is the final arbiter of truth, whose all-seeing position might be illustrated thus:

Version IVersion II

But the reduction of ideology to class position and the elevation of the intellectual to an all-seeing position above the battle has led these primitive Marxist analyses into an empiricist trap which makes them vulnerable to attack by sophisticated empiricists such as Popper (1972), Kuhn (1970) and Lakatos (1970). But Popper's criticism of Marxism as 'historicism' which has been empirically falsified and should therefore be rejected is ultimately, as Williams points out (1975) a 'red herring'. The real issue is the contradiction of objective knowledge being produced by a knowing subject. And Popper, Williams argues, cannot tolerate contradictions. Indeed, it is the search for continuity, consistency and rationale in the development of scientific knowledge that underpins such concepts as 'World 3' (Popper, 1972), 'articulation' (Kuhn, 1962) and Lakatos' attempt to reconcile these two writers:

'It is not that we propose a theory and Nature may shout NO; rather we propose a mass of theories, and Nature may shout INCONSISTENT.'

(Lakatos, 1970: 130)

To which the excluded reply is, 'Why not?'

The failure of traditional Marxism to address what Foucault describes as

'not a question of a battle "in favour" of truth but of a battle about the status of truth and the economic/political role which it plays'

(Foucault, 1976: 14)

has to some extent been rectified by Louis Althusser (1966). Through his writing, materialist ideology has outgrown its status of 'a slogan under which political and economic interest of a class presents itself' and has established itself as 'the way in which the individual actively lives his or her role within the social totality: it therefore participates in the construction of that individual so that he or she can act' (Coward and Ellis, 1977: 67). The reintroduction of the subject (albeit a positioned and decentred subject) and the distinction between repressive and (relatively autonomous) ideological state apparatuses has allowed materialism to extend its analysis to language itself. Language has been recognised as central to the construction of the subject in his or her social reality. That construction is seen to take place through social practices which are not necessarily overtly repressive, but which work through the subject's view of him/herself - in other words, through the Unconscious. At this point, it becomes possible to rehabilitate Freud. The process whereby language is acquired becomes an important moment for the understanding of the role of ideology in the construction of self-image or identity (Coward & Ellis, 1977: 110).

That process has been analysed and expounded in the writings of Lacan. His thesis of the 'mirror-phase' - the moment when the infant

forms an image of itself, as a body which is separate from its drives and its relations with its mother - has led to the development of the concept of the Imaginary.

The Imaginary represents an important advance on Mead's theory of socialisation. For Mead, the moment of Self-recognition is a moment of acquisition. It is the moment at which the infant experiences herself as an integrated, unified whole. For Lacan, it is a moment of loss. What the infant recognises is the possibility of the production (representation) of a unified self. But in the production of that self - the Ego - the subject simultaneously misrecognises itself, for the price of that apparent unity, that desire to reproduce a self-identity in relation to the specular counterpart, is the denial of contradiction, of fragmentariness, and the consequent splitting-off/loss of the Other. The Other may be described as those non-legitimated forms of lived experience which thereafter forever dictate the paradigms from which the speaker selects, in order to exert control over them.

Ideology, then, has to do with the handling of that moment of self (mis) recognition. It has to do with the simultaneous affirmation and denial of contradiction through language:

'Ideology is discursive closure. The process of the subject is double-edged, admitting closure and contradiction, closure and plurality of the discourse of the unconscious. The subject is a site of contradiction and hence of the possibility of revolutionary change, of rupture.'

(Adlam & Salfield, 1978: 100)

The relationship between ideology and knowledge can therefore be redefined as the relationship between the Imaginary and the Symbolic. In the context of this thesis, the term 'symbolic' may be used to describe both language and specific social practices which 'can lean on linguistics as a model for the elaboration of their systematic reality'

(Coward & Ellis, 1977: 1). The production of knowledge is therefore dependent on the maintenance of space between the Imaginary and the Symbolic (Burton & Carlen, 1979: 31). The goal of conventional epistemology is to close the gap by representing as always-already present a unity or coherence which is forever absent. In discourse analysis, however, that apparent unity is challenged. Its presence is not accepted; it is seen as the Object of a discourse, as the articulation of a Desire - the desire to 'confront and control the Other' (Burton & Carlen, 1979: 24).

Programmes, Technologies, Strategies - and Resistance

The Desire of discourse is the ejection of the Other and the closure of the gap between the Imaginary and the Symbolic. But this thesis is not only about discourse; it is also about social and institutional practices in relation to a specific group of female lawbreakers. And it is about the effects of both discourse and practice. What, then, is the relationship between discourse, practice and effectivity?

Foucault employs three concepts which assist in understanding that relationship (Gordon, 1979: 35). Those are the concepts of the programmes, technologies and strategies of power.

Programmes of power are not merely the formulation of wishes and intentions but, as Gordon relates, have two fundamental characteristics:

1. They presuppose a knowledge of the field of reality in which they intervene and
2. they render reality in the form of objects which are programmable.

In relation to the present study, the assessments which are made of female lawbreakers, especially in the form of social inquiry and psychiatric reports, will be examined as programmes of power. The rules

by which such women are rendered programmable will be identified and, likewise, those knowledges and rules which exclude from programmability.

Technologies of power are those mechanisms whereby programmes produce effects. They may be architectural institutions, like court-rooms, hospitals, schools, factories or prisons (Bentham's panopticon being a classic example); they may be practices, such as the provision of welfare, the muting of subdominant modes of expression (Ardener, 1975) or the ascription of motives (Taylor, 1979). Finally, they may be norms - technologies which have been internalised to the extent that they are no longer viewed as technologies at all. Self-regulation demonstrates the supreme success of a programme. In this study, 'technologies' will be taken to mean all those things which professionals do to, with, for and about female lawbreakers, together with the resources upon which they draw.

One of those resources is the field of strategy. It is a difficult concept to define, but Gordon's interpretation seems particularly pertinent to the present study:

'What is meant by a strategy of power is the inter-play between one or more programmes technologies and an operational evaluation in terms of strategy: a logically hybrid (and sometimes elusive) complex which couples the production of effects with the utilisation of those effects.'

(Gordon, 1979: 39-40)

Strategy is not coherent, logical, overall plan of action (although it may be represented as such). Rather, it is an opportunistic and expedient means of exploiting the social field of intervention. It is the means whereby the authority of programmes can be maintained (or not) in spite of (and yet because of) their effects. It is, for example, the means by which a programme 'caters in advance for the eventuality of its own failure' (Gordon, 1979: 38). The recent decision by the Home Secretary to extend the 'short, sharp, shock' regimes, introduced in 1980

in four Detention Centres, is good example of strategy:

'Any reasonable Home Secretary would have first permitted himself a wry smile at his proof of the irrelevance of his party's prejudices, square-bashing clearly proving infinitely preferable to the soul-destroying tedium of detention centre work, the so-called "soft" option. Not Mr. Brittan. The more embarrassingly pleasurable elements, such as extra PE, have now gone. But the tougher regime is to be extended to other detention centres, even though this report states that such a regime has had no deterrent effect on reconvictions rates or crime rates.'

(Guardian Editorial, 26th July 1984)

The 'masterly stroke of professional imperialism' achieved by psychiatry in its use of the concept of 'psychopathic disorder' (Carlen, 1984: 5) is another example of strategy, which has already been quoted in this thesis. Yet another example is that of the 'recuperation' of sub-cultural signs:

'It is through this continual process of recuperation that the fractured order is repaired and the subculture incorporated as a diverting spectacle within the dominant mythology from which it in part emanates: as 'folk devil', as Other, as Enemy.'

(Hebdige, 1979: 94)

Gordon characterises strategy as:

- a) 'the exploitation of possibilities which it itself discerns and creates';
- b) 'the arena of the cynical, the promiscuous, the tacit, in virtue of its general logical capacity for the synthesis of the heterogeneous.'

(1979: 39)

In this study, the concept of strategy will be used to analyse the ways in which professional agents of signification sustain themselves in their continued work with female lawbreakers (or, alternatively, justify their ceasing to work with them) in the face of incongruity between programmes and their effects.

At this point, however, there is again a danger of losing sight of the speaking subject. What power, if any, does she have over this space? The programmes, technologies and strategies by which the gap between the Imaginary and the Symbolic is conventionally closed serve to give meaning or signification to the subject and her acts. To the extent that this signifying code is accepted by the subject, then it holds and controls her. Nevertheless, the subject does have power - the power to 'infringe the code in the direction of allowing the subject to get pleasure from it, renew it or even endanger it' (Kristeva, 1975: 52). The power of the subject is, therefore, the power of negativity and heterogeneity. It is the power to 'say "No" to the conditions of existence of existent knowledge' (Burton and Carlen, 1979: 19); it is the power to transgress and call in question the 'transcendental ego' (Kristeva, 1975: 51); it is the power of resistance to and refusal of assumptions of homogeneity. By demonstrating the existence of heterogeneity and contradiction, the speaking subject is helping to keep open that space whence knowledge is produced.

But is the nondescript female lawbreaker really a resister? Does she, in fact, defy description? Surely, to describe her as such is merely to romanticise her plight? For the most part, female lawbreakers appear to be markedly non-resistant and their tactics of rebellion, such as they are, merely 'defences of the weak', (Mathiesen, 1972). Yet, on closer examination, it begins to seem as though such an assessment may be patronising, and itself a programme rooted in a discourse which positions women as powerless because their power is not overt. But:

'the existence of those who seem not to rebel is a warren of minute, individual autonomous tactics and strategies which counter and inflect the visible facts of overall domination.'

(Gordon, 1979: 43)

Female lawbreakers have their programmes, technologies and strategies, too!

Conclusion

This chapter has outlined the theoretical framework within which my thinking about female lawbreakers has developed. Chapter Two identifies the discourses wherein the statements gathered from interviews with court-room personnel are lodged. The following chapters use the analysis of discourse and its relationship to practice to illustrate, expand and reinforce the various elements which constitute my hypothesis.

These rules governing the various discourses may now be summarised thus:

1. Female lawbreakers are constructed as targets upon which power is inscribed (in the language of positivism - 'It is possible to know the truth about female lawbreakers').
2. Their lawbreaking activity (whether defined as meaningful action, meaningless action or determined behaviour) is read as the property of a unified self - a whole personality. Even the notion of a disintegrated, sick personality presupposes its opposite).
3. Statements which reinforce notions of essence and unity are privileged as statements of 'assessment'; those which do not are excluded as 'common sense'.
4. The organisation of the distinction between 'assessment' and 'common sense' depends, not on the action behaviour signified, nor on the substance of the statement, but on the power of the agent of signification.
5. That power is represented as the power of sovereign knowledge - a privileged power which is justified in subjugating inferior knowledges.
6. 'Assessment' may therefore be defined as 'that which is recognised by a powerful agent. And that which is recognised is mutually dependent

on the material consequences of that recognition. The purpose of recognition is to normalise; that which cannot be normalised (i.e. appropriated by an already institutionalised rule) cannot be recognised.

7. Contradictory statements may therefore be reconciled in assessment or complementary statements dispersed to ensure the effectivity of discourse in the specificity of diverse non-discursive practices and in the face of powerful (i.e. energetic) challenge from the Other (i.e. those non-legitimated forms of lived experience which thereafter forever dictate the paradigms from which the speaker selects, in order to exert control over them).

CHAPTER TWO

THE PARAMETERS OF FEMALE CRIMINALITY: A REVIEW OF SOME DISCOURSES

Introduction

Traditional theories of female crime have all been fundamentally positivistic in their nature. They have premised that:

1. It is possible to distinguish female lawbreakers from non-lawbreakers by characteristics other than their lawbreaking action¹;

2. These characteristics reside within the individual physiology and psychology of generalised woman and/or specific women and that, whilst there may be some debate about whether these are innate or socially-determined, they are nevertheless represented as inherent, in the sense that they exist as permanent attributes in a unitary form;

3. These 'essential' characteristics are also universal within the category 'female lawbreaker' and can be analysed ahistorically.

In other words, the observed category, 'women who break the law' corresponds with an abstract category, part of a pre-existing universe, about which 'knowledge' can be discovered through various discourses and institutions. Almost all existing literature on women who offend has been written with an explicit or implicit positivistic agenda, involving the classification of symptoms, the diagnosis of a syndrome and the search for an aetiology. This thesis, by contrast and in line with the most recent literature on the subject, is premised on a view of women offenders (and indeed all human subjects) as 'the differentiated terminals of the varied capacities and practices they engage in' (Hirst and Woolley, 1982). Initially, however, it is necessary to outline the discourses within which female lawbreakers have traditionally been constructed.

Criminological Discourse

The 'Unfeminine' Female Lawbreaker

It would be a mistake to assume that Lombroso has long been discredited in anything other than the technicalities of his 'findings'. His spirit is alive and well and resides in many practitioners and not a few academics who focus their interests on women who offend in the 1980s. His belief that women, being lower on the evolutionary scale than men and having not reached the stage of refinement where 'atavistic stigmata' clearly distinguish the 'degenerate' from the 'normal', must all be considered by nature 'subnormal', and that those few women who also displayed stigmata were thus monstrous, is a theme which constantly recurs - in a more or less disguised way - in discourses of all degrees of academic respectability, and none. The logic of his argument that, since women were 'congenitally less inclined to crime than men', (Lombroso, 1959) those who did offend were inherently more masculine than they should be, remains highly influential.² Prins for instance, as late as 1980, makes reference to a number of recent research 'findings' in respect of the chromosomal make-up and physique of female offenders, suggesting that delinquent girls tend to be taller and heavier than average for their age and sexually precocious with a statistically significant tendency towards lesbianism or bisexuality. He suggests that there is a need for much more research in this area and one must therefore conclude that Lombroso, far from being dead and buried, has a robust future.

The 'Essentially Feminine' Female Lawbreaker

If the 'essentially unfeminine' theories of female crime appear to have a healthy future, the same cannot be said of the 'essentially feminine' theories of female crime - those theories which attempt to

establish a relationship between anti-social behaviour and essentially female physiological conditions. The most consistent research in this area has been by Katharina Dalton (1964) who found a correlation between offending and the experience of 'pre-menstrual syndrome' in a much higher proportion of female offenders than would be expected statistically. The 'pre-menstrual syndrome' will be discussed further under the section headed 'Gynaecological Discourse' but at this stage it is perhaps interesting to note the reluctance of academic and practising psychiatrists to give credence to her work. Prins suggests that much of the evidence provided in other studies (by men) is conflicting and that evidence provided by women is 'anecdotal'. Similarly, evidence linking the menopause to lawbreaking is also, according to Prins 'not conclusive', and, although pregnancy is, by definition, a prior existing condition for the crime of infanticide, current psychiatric thinking (Bluglass, 1978) is that the physiological aspects of pregnancy and child-birth have been overstated in relation to the crime. Although it is not being argued here that socially-defined acts, such as crime, can be reduced to biology - and the substance of Dalton's theories is not accepted - the refusal of a (predominantly male) medical profession to allow women a theoretical site to talk about their own bodies themselves, is a theme that will recur throughout this thesis. Whilst it would be simplistically reductionist to argue that the maintenance of gender roles is a constitutive feature of psychiatry, disorders arising from a disturbance of female biology do tend to be marginalised (Allen, 1984) and women are encouraged to see themselves as 'sick' only within definitions provided and controlled by men.

The Role-Playing Female Lawbreaker

Having said that, all theories which attempt to reduce action to biological differences can be criticised, at the very least, for

conflating concepts of sex and gender (Oakley, 1972). Sex differences may exist, although they may not be so great or fixed as we suppose, but the greater influence on our action is gender and that is materially constituted. The role theory of female crime premises that the normal socialisation process of girls results in a greater emphasis on internal controls and outwardly conforming behaviour (particularly sexual behaviour) than does the socialisation of boys. The delinquent woman is, therefore, an under-socialised woman - one who has fallen short of the expectations of her role. Invariably the key to delinquency is seen to lie in the expression of sexuality.

Thomas (1923) argues that human behaviour is based on natural 'wishes' - for new experience, security, response and recognition. These wishes are in turn based on instincts of anger, fear, love and the desire for power. Women, he argues, have a stronger love instinct than men and a more forceful wish for response. Delinquency is simply the inevitable response of a woman who has not had her 'wishes' satisfied legitimately. The corollary of this is that the illegitimate expression of (sexual) wishes must be unsatisfactory because it is unnatural. Therefore, its sole purpose must be as a currency to purchase other (material) things - to manipulate:

'Good women keep their bodies as capital to sell in matrimony for marriage and security, whereas bad women trade their bodies for excitement.'

(Klein, 1977)

If Thomas sees the delinquent woman as 'unadjusted' but corrigible, Pollak (1950) takes a more pessimistic view of female nature, and the impact of socialisation on it. Whilst recognising that the double standards of sexual morality in society discriminate against women and that many domestic tasks to which women are socialised are irritating and frustrating, he clearly believes that women, far from suffering in

this situation, actually use it, not only to commit as much crime as men, but also to dupe men into protecting them against the consequences of their behaviour. Their behaviour is characterised by subtlety rather than violence. They commit as much crime as men but socialisation influences the detection, reporting and treatment of such crime. Men are physically strong and have been socialised to protect women, who are physically weak. But, Pollak argues, men are actually more vulnerable emotionally than women because they cannot, physiologically, hide their true feelings (the lack of an erection cannot be disguised) whereas women can (a female orgasm is not essential to the act of copulation and is not necessarily apparent to the man). Men have, therefore, been socialised into adopting a chivalrous attitude towards women - an attitude which women have abused because they are, by nature or nurture (Pollak doesn't make it clear which) - inherently and incorrigibly deceitful and manipulative.

Advocates of role theory locate the causes of female delinquency in the relationships which women experience in their childhood and, more particularly, their adolescence. It is a liberal view which proposes the manipulation of individuals through institutions (primarily the institution of social work) and which denies the existence of inherently biological tendencies towards crime. But even in these so-called cultural theories assumptions about the essential nature of woman cannot be avoided.

The insights which role theorists offer into the differential socialisation of boys and girls can be attached to either liberal or radical theories of society as a whole. The problems with 'liberal role theory' is that it still - if only by default - makes assumptions about 'human nature'. Men and women start off with a pre-given package of instincts and drives, on which the socialisation process acts. At the

end of the day, the package may be different but it is still a static package of attributes. Although the packages will vary between societies, the economic and historical conditions within a particular society which might originally have dictated the kind of package 'appropriate' to that society at a particular time have become detached from the process of socialisation, which is seen to have a coherence, stability and self-perpetuation of its own. The process becomes impervious to external influence and, whilst conditions in the real (material) world may change, role expectations do not - or do so only very slowly. Forms of role theory which fail to take account of the wider connotations of concepts such as racism, gender and class within any society, tend to become authoritarian, static and politically conservative.

The Feminist Female Lawbreaker

Those (primarily American) writers on female crime who have challenged traditional role theories have pointed to the obsessional need to define women's behaviour sexually (Klein 1976). By contrast, they highlight the poverty which correlates with much female crime (Crites, 1976) and predict that the current economic crisis could result in poor women losing what jobs and income they had and committing more 'street offences' - vagrancy, drunkenness, drug dealing, soliciting etc., (Klein and Kress, 1976). On the other hand, the same writers accept that certain classes of women - thanks in part to the Women's Movement - have actually improved their positions within the labour market and may therefore have more opportunities for 'white-collar' crimes such as embezzlement.

If common-sense indicates that 'not all women offenders are poor' (and not all poor women offend) then those who so enthusiastically sought to establish a direct link between women's 'liberation' and an increase

in female crime (e.g. Adler, 1975), have had to face the common-sense reality that many women offenders are poor (Smart, 1979) and that very few show much appreciation for or understanding of the aims of the Women's Movement, (although there is some evidence (Carlen, 1983) that they can very well articulate an untheorised awareness of women's oppression). The new 'violent' woman criminal may have caught the imagination of the media and threatened to become yet one more of the 'moral panics' of the late 1970s but more sober analyses have been sceptical of such a simplistic approach. Indeed, where research has been specifically concerned with the correlation between attitudes to feminism and delinquent behaviour (e.g. James and Thornton, 1980) the indications are that 'positive attitudes towards feminism tend to inhibit rather than promote delinquent involvement'.

It is, in any case, misleading to think of the Women's Movement simply as a body concerned with equal opportunities for women (Smart, 1979). The purpose of the Women's Movement in relation to female crime is not to urge equality of exposure, opportunity or treatment at an individual level. Its purpose is 'to challenge the dominant assumptions long held by academic practitioners and by workers within the criminal justice system' (Klein and Kress, 1976). It aims to draw attention away from individual offenders and concentrate on the social structure which produces 'specific systems, such as imperialism, racism, capitalism and sexism, because they promote inherently repressive relationships and social injury'. So the very definition of crime changes from that of individual law-breaking to that of anything which violates basic 'human rights to self-determination, dignity, food and shelter, and freedom from exploitation'. Justice becomes a political rather than legal concept, and the traditional distinctions between offenders and victims are questioned.

It is only within this conceptual framework that Carol Smart's book 'Women, Crime and Criminology' (1976) (until the recent publication of Heidensohn, 1985, the only British feminist critique of the literature on women and crime) can be viewed as a coherent whole. Dealing, as it does, with women offenders, rape and mental illness, the unifying theme is that of women as 'the unrecognised victims'. The danger of such an approach, however, is that, yet again, the theoretical site has been drawn up - this time not simply for 'women who break the law', but for all women. All women are victims. Their specific circumstances, experiences, behaviour can be, to all intents and purposes, ignored. From the Scylla of Lombroso's 'born' criminal woman, we have lurched to the Charybdis of the woman as 'victim of the law' - both equally unable to define (and thus control) their situations.

But, as Cousins (1980) remarks satirically, is it really good enough to say simply that the 'law grinds women and men rule the law'? It can be argued that there is no essential or singular relationship between the law and women as such. The law is complex and multiple in its functions and effects, nor does it recognise pre-existing 'men' and 'women' categories as such. The law creates a 'legal person' in relation to particular actions in particular circumstances. Our task, therefore, should not be one of exposing, through a moral discourse about 'fairness' and 'natural justice' the way in which the law responds to a pre-defined category, 'women' but to analyse the mechanisms by which the law organises sexual difference and the structures that give rise to those mechanisms (Cousins, 1980).

In the light of Cousins' exhortation, Heidensohn's (1985) eloquent exposition and critique of the 'state of the art' in relation to feminist criminology is disappointing. Her thesis, that we should focus on explanations of female conformity in order to find clues to female non-

conformity, assumes rather than establishes a symmetrical relationship between these two objects of discourse. Understanding why the vast majority of women appear to conform to society's legal rules does not provide a full understanding of the reasons for non-conformity. By exploring the specific experiences and circumstances of those female lawbreakers who are defined as insufficiently bad to be imprisoned yet insufficiently mad to be hospitalised, this thesis locates itself in a relatively new tradition of criminological discourse. That tradition has so far seen only three studies relating to female lawbreakers - McLeod's study of prostitutes (1982) and Carlen's two studies of women in prison in Scotland (1983) and the autobiographical accounts of 'Criminal Women' (1985). A further study is about to be published (Carlen, 1987). It is a tradition which, to borrow from Thompson (1978) (quoted in Taylor (1980)), seeks to bring to particular account those discourses which variously define female lawbreakers as born, socialised or victimised into crime.

Judicial Discourse

Very little has been written about the processing of female offenders by the Criminal Justice System and official discourse is virtually silent on the subject, dismissing women in footnotes or single sentences as statistically insignificant (Butler, 1975; Younger, 1974; Criminal Justice Act 1982). Much of what has been written is concerned with juvenile girls and/or American women. However, the unifying theme of existing literature is whether or not women offenders are treated more leniently than their male counterparts.

The hypothesis that women are protected from the full force of the law by the chivalry of men was first proposed by Pollak (1950). The concept of chivalry has been challenged from two directions: firstly, it has been argued that it does not exist and secondly, that it exists, but

that its motivation is not one of altruism, as Pollak suggests, but pure self-interest. Documentation of the absence of chivalry in the British criminal justice system is sparse and seems confined to Dell's study (1971) of the lack of legal representation amongst women who were eventually sentenced to imprisonment and Mawby's (1977) frequently misquoted finding that 'when previous record is taken into consideration, females are more likely to be imprisoned than males'. More recently, Farrington and Morris (1983 a & b) have argued that when account is taken of the fact that women generally appear to commit less serious offences than men there is little disparity between the sentencing patterns of men and women and certainly no evidence that women are consistently treated more leniently. Eaton (1986) comes to a similar conclusion, though she argues that concentration on the end product of sentencing masks the inequality of treatment which female lawbreakers receive as a result of the dominant position occupied in criminal justice proceedings by the ideology of the family. Other (American) studies (e.g. Steffensmeier and Kramer, 1980) demonstrate that women do consistently receive lighter sentences than male defendants but that chivalry is only one reason for this. The practical difficulties of imprisoning women, the fact that (despite 'moral panics' to the contrary) adult women do not constitute a statistical crime problem, the belief that women respond better than men to non-custodial treatment and the prevailing perception of women as non-dangerous, all play their parts. Male dominance in the public sphere, it is argued, is not served by putting women in jail. It is actually in men's interests to keep women in their homes wherever possible.

But such studies still search for an essential relationship between the criminal justice system and all women. The reality is more complex than that. Chivalry is to do with the relationship between 'gentlemen'

and 'ladies' and, as Klein points out, 'ladies' are the least likely to come in contact with the criminal justice system in the first place. 'Ladies' are wealthy and white, whereas 'offenders' are poor and disproportionately black (cf. Home Office, 1986a; NACRO, 1986). Klein makes an important material point about the relative absence of a whole class of women from the criminal justice system but it is a point that can be made with equal force about men and it actually misses the point about the force of the concept of chivalry, namely, the ideological. The one thing that is not expected of men offenders is that they should behave like 'gentlemen'. It is accepted that they are not - they are 'scoundrels' and the most that is expected of them is that they be 'honest scoundrels', 'likeable rogues'. But there is no equivalent celebration of female delinquency (Heidensohn, 1985). Women offenders are still expected to behave 'like ladies' - submissive, maternal, emotionally fragile (Chesney-Lind, 1978; Worrall, 1981 if they are to benefit from male chivalry. Those who resist such labelling, who are non-conforming in their manner or life-style, forfeit those benefits and find themselves dealt with as harshly as, or more harshly than, their male counterparts.

When processing adult female lawbreakers, considerable emphasis is placed on their domestic situation and responsibilities (Carlen, 1983) but the other characteristic which is assumed to evoke male chivalry is that of women's mental, or at least emotional, state. Courts have been advised to be 'specially vigilant' for any sign of mental disorder in women defendants (Butler, 1975). Woodside (1974) found that, in her study of an Edinburgh Court, 'a good job' was done by the court in picking out mentally abnormal women offenders, although she goes on to criticise the lack of treatment facilities for such women once detected. The power of psychiatric discourse will be discussed in more detail below but at this stage it is sufficient to identify it as an excusing

condition alongside domesticity - a further invasion of the female lawbreaker's space within which she may seek to define herself and her actions. This thesis is about the negotiation of that space and, in particular, the mechanisms some women have employed to resist a total pitch invasion by a discourse which recognises only those excusing conditions that are located and fixed within domesticity, sexuality and pathology.

Penal Discourse

Official discourse in respect of the imprisonment of women is ambivalent. A Home Office publication in 1970 expressed the hope that by the end of the century 'even fewer or no women at all' will be given prison sentences. However, recent developments in the government's prison building programme (NACRO, 1987) and official statistics of women's imprisonment over the past fifteen years, (Home Office, 1985) do not suggest that such hope is justified. Over twice as many women were imprisoned in 1981 as in 1971 and there was an even higher increase in the numbers imprisoned for fine default. The numbers of women remanded in custody also indicates no great will on the part of the judiciary to keep women out of prison. Of those remanded, only about one-third eventually receive custodial sentences - about half the proportion of remanded men. It is a matter of debate whether the reasons for remands are 'chivalrous' - that is, made in the belief that criminal women are sick or abnormal - or punitive - to give them a taste of prison (Heidensohn, 1981). The fact that there has also been a marked increase in the numbers of women sentenced to less than six months imprisonment would suggest the latter.

Until recently, very little had been written about women in prison in England, apart from an historical account by Smith (1962) and articles by Heidenshon (1975), (1980). Three major studies have been published in

the 1980s (Carlen, 1983; Dobash, Dobash and Gutteridge, 1986; Mandaraka-Sheppard, 1986). Other available information tends to be of a campaigning nature, such as that produced by the National Association for the Care and Resettlement of Offenders and the Howard League for Penal Reform (see, for example, Seear and Player, 1986), or autobiographical (McShane, 1980; Peckham, 1985).

All the evidence seems to suggest that women cope less well with imprisonment than men. A much larger proportion of female than male prisoners are considered to be behaviourally disruptive and, in many cases, are considered to be 'mentally abnormal', if not actually 'mentally ill' (Butler, 1975). But there are two broad schools of opinion as to why this should be so. Firstly, there is the view that women, by nature, withstand the stresses of prison life less well than men - that they are 'depressingly normal' women, put under abnormal strains. Secondly, there is the view that many women in prison are highly disturbed prior to imprisonment and are therefore, inappropriately sentenced.

Despite official unease, however, the imprisonment of women would seem to serve a purpose of disciplining - through a very specific form of social control - the behaviour of women (Carlen, 1983: 59). Women who end up in prison (in Scotland) are those who have not only broken the law, but have already stepped out of place as wives and mothers. They may not consciously have rejected the traditional discipline of family life - many still believe in the ideal of family life - but their experience of it conflicts with that ideal. In reality family life has meant poverty, poor housing and drunken, violent husbands. The judiciary claims to understand this but nevertheless judges women who have broken away from this as 'bad mothers'. Women do not go to prison only because of their domestic situation but the fact that this traditional

form of discipline has already broken down is, at the very least, an indicator that the discipline of prison may not be wholly inappropriate for them. If, in addition, they have demonstrated that they are 'beyond care or cure' - by virtue of intractable disorders such as alcoholism and personality disorders - the need for discipline may be considered even greater. The appropriation by psychiatric discourse of the 'dumping zone' (Gunn et al., 1978) known as 'personality disorders' will be discussed in more detail below but suffice it to say here that the use of such a label, by definition, implies that the discipline setting of prison is an appropriate disposal.

Within prison, the official discourse encourages women to be sociable, feminine and responsible (Carlen, 1983). In practice, however, the careful structuring and surveillance of association and bodily care and the absence of freedom to make even the most trivial decisions for oneself, can produce directly opposite results. In fact, the short-term imprisonment of women is about the control of the women that 'nobody really wants' (1983: 218).

By the time a woman arrives in prison (unless she has committed one 'serious' crime) it is assumed that she has expended and exhausted (often literally) the carers and curers outside. It is assumed that what she was offered outside was fundamentally different from what she will have to endure inside. However, Carlen has shown that the 'caring society' is often a 'dismissive' one, not offering the care it professes. It will not be argued that the women who are the subject of this thesis have been dismissed - yet. They are the ones about whom a glimmer of official hope still exists. But what will be argued is that the nature of the 'help' they receive is often based on injunctions identical to those of penal discourse: 'Discipline, medicalise and feminise' (Carlen, 1983: 18).

Gynaecological Discourse

To invoke the concept of the witch in the interpretation of perceptions of womanhood in Western societies in the twentieth century may seem somewhat eccentric. The relevance of a study of the Bori cult's containment by spirit possession of sterile and childless Hausa women in Nigeria (Lipshitz, 1978) may at first elude, but the belief that 'women are witchlike in being able to give birth to live beings' remains deeply embedded in western as in non-western cultures. As Shorter has argued 'something about the uterus, and the sexual and reproductive functions associated with it, presents a magical threat to men' (1984: 286). The realisation that the internal processes of the female body are crucial to, yet beyond the control of, men is something which provokes fear and a desire to contain, to limit and to punish.

Two themes emerge from this fundamental fear of the female body - this belief that even the 'normal' woman is 'not normal'. Firstly, the 'normal' woman can actually be controlled, or at least contained by her abnormalities. Menstruation, pregnancy and childbirth, and the climacteric can all be used to restrict the 'normal' women's perception of herself and thus her behaviour may be contained without, by and large, much explicit external pressure. The ideology of 'normal abnormalities' has become so powerful since the development of 'scientia gynaecologia' (Edwards, 1981) in the nineteenth century that it rarely needs to be restated. The domination of western culture by male visions has led to these fears of women's physical qualities being incorporated into the culture as a whole and being believed by both men and women (Shorter, 1984). The second theme, and corollary, however, is that women who suffer gynaecological dysfunctions or who reject the controlling influence of the reproductive cycle (e.g. by taking the Pill) become problematic and potentially out of control. They have to be controlled

in some other way. For the Hausa, the solution of accepting/acknowledging devil possession is clear - and it is as clear to the women themselves as to the men who seek to control them. (The role of women in controlling women (Hutter and Williams, 1981) will be discussed further under 'Social Work Discourse' below). For British women the solution may also be clear - a retreat into mental illness (not so far removed from devil-possession). But there exist women who do not have the 'decency' to accommodate their biology in this way and for them a more punitive discourse must be invoked - a discourse which is in some way related to sexual activity and its abuse (Edwards, 1981).

The dilemma posed by the contradictory unspoken belief that 'the normal woman is not normal' is exemplified by the work of Katharina Dalton (1964) on the Pre-Menstrual Syndrome, and by her subsequent critics. She admits that 'this title covers a wide variety of cyclical symptoms, which regularly occur at the same phase of each menstrual cycle'. She then goes on to itemise no less than 39 possible symptoms, so varied that one feels there can be *few women unable to lay claim to at least one or two regularly preceding their monthly periods*. Indeed, Dalton reflects that the incidence of the premenstrual syndrome may be anything between 25 and 100 per cent, 'depending on definition'. But the syndrome, she hastens to add, must not be confused with premenstrual discomfort:

'A mild degree of premenstrual discomfort is not necessarily undesirable and gives the woman a useful reminder to provide herself with protection. One woman was relieved of her premenstrual headache, but instead of welcoming the relief, complained that she had begun menstruation when unprepared' (my emphasis).

(Dalton, 1964: 39)

And this is where the unacknowledged, but all-pervading ideology of the book emerges. Ostensibly, the premenstrual syndrome is about the physiological changes that occur each month in the female body, the

possible effects these may have on mood and the possible alleviation of these effects by drug-therapy. So far so good - a morally neutral, clinical exploration of a previously neglected area of medicine. Though why, one might ask, has the area been neglected? Arguably, it is because the premenstrual syndrome is about 'protection' - and protection is not merely about buying sanitary towels but about protecting the woman from herself. When talking about the relationship between menstruation and crime, Dalton later refers to a study of a women's prison where:

'....a number of women are given the precautionary privilege of requesting to be locked in their rooms each month during the days of premenstrual tension, when their mental instability is most dangerous and acute....The appreciation by women prisoners of a time when their behaviour will lead to trouble has no parallel in male prisoners' (my emphasis).

(Dalton, 1964, 82)

An almost direct comparison can be made with studies of pre-industrial and non-western tribespeople where women are expected to go out into the bush during menstruation.

The need of a woman to be protected from herself underlies the sporadic popularity of the use of 'P.M.S.' in mitigation in criminal cases, and, on the surface, it is an excusing condition that one would expect to appeal to the male sense of chivalry. But, as we have seen earlier, it does not and the attitudes of both the medical profession and the judiciary to it are ambiguous (Edwards, 1982; Luckhaus, 1985). Critics of Dalton point to studies where placebos work as effectively as progesterone and talk of 'a trained incapacity' rather than any genuine illness. Where there is evidence that progesterone has made an aggressive defendant 'sane and benign' then 'P.M.S.' may be regarded with favour, but where there is a suspicion that a woman is seeking to protect herself, not from herself, but from the due process of law, she

may experience a less chivalrous attitude:

The relationship between menstruation (and indeed gynaecology as a whole) and the psychological/emotional state of a woman's mind is not just one-way, (Oakley, 1972: 45) and it is the two-way nature of the relationship which is most threatening to men. It is perhaps no coincidence that the almost total control which the Pill (in theory at least) has given women over their own pregnancies appears to correspond with an increasing reluctance on the part of the medical profession and the judiciary to allow pregnancy or child-birth as an excusing condition in criminal cases. Proposals for the abolition of the offence of Infanticide (Butler, 1975: 249) are based on the apparently enlightened view that the medical theory that childbirth causes a hormonal disorder that may lead to mental illness is outdated. Instead, the social factors surrounding child killing are stressed and it is noted that these may affect the father as much as the mother! Whether this might lead to a more punitive attitude towards a mother killing her baby remains to be seen, but the benefits to women of a formal equality before the law which continues to ignore substantive material inequalities are by no means self-evident (O'Donovan, 1984).

The menopausal woman within English society occupies a 'negatively marked category' (Ardener, 1978). Identified throughout her life solely through the care of husband, children and perhaps ageing parents, freedom from these duties and responsibilities brings no sense of joy but 'a humiliating process of gradual, sexual disqualification' (Sontag, 1978, quoted in Phillipson, 1981) and the exacerbation of conditions of powerlessness and social exclusion (Phillipson, 1981). Yet the only way in which this all-pervading experience can be represented as an excusing condition in respect of anti-social behaviour is by its reduction to a quantifiable unity - clinical depression. As a psychiatrist explained

to me, 'the inhibitory function of the brain (which prevents us from expressing directly our innate, primitive and of anti-social drives) can be lost as a direct result of the clinical depression sometimes associated with the menopause'. It is perhaps not surprising that some women find this definition somewhat inadequate to describe the complexity of contradictory feelings that threaten to overwhelm them. Yet if they do not accept the expert's definition of their experience (more of which under 'Psychiatric Discourse' below) they are likely to be classed as malingerers - as 'silly, self-indulgent and superstitious' (Ehrenreich and English, 1973).

So the 'normal' woman is controlled by the 'normal abnormalities' of her life cycle, institutionalised as they are in 'normal' domestic life. This makes her sexually available to only one man throughout her life, who tolerates her times of unavailability providing, in return, he can define her perception of them and instill a process of guilt and compensation in her. Where such a system breaks down, the introduction of an expert usually male is permissible to provide different definitions, but at no time must the woman seek to define herself and draw up her own space.

It has been argued that the assumed 'normal' woman in fact tends to be white and wealthy (Klein, 1976), and this adds another dimension to the complexity of the gynaecological discourse. Female biology as a disease, like the ideology of the family, has its root in the Victorian era. Women were considered to be lower on the evolutionary scale than men and more and more concerned with reproduction alone (Ehrenreich and English, 1979). This meant that the more civilised and redefined women became, the more inherently weak they became. So middle and upper class women were considered the most sickly and in need constant rest and medical care. Poor and working class women were deemed inherently

stronger (less civilised) and this was convenient, since their lifestyle precluded them from lengthy (and expensive) medical treatment anyway. Some other explanation had to be found for any abnormalities in their biology and/or behaviour and that was invariably one of sexual depravity, for which they themselves were considered totally responsible (Edwards, 1981).

So the appeal to gynaecology as an excusing condition is characteristically available to the 'normal' (white, wealthy?) woman. Conversely, (and this may be more relevant to this thesis), if it is possible to reduce behaviour to biology then this implies an essential 'normality' and is therefore a desirable status to aspire to. The poorer woman may not have access to such an appeal - by reason of her poverty - but may, ironically, subsequently be defined as 'abnormally abnormal' - and therefore responsible!

Psychiatric Discourse

Just as the 'normal' female body is perceived to be physically abnormal (thus reinforcing the ideological normality of the masculine body), so the 'normal' woman is often assumed to be mentally unstable, possessing few of the positive traits associated with being a 'normal healthy adult' (for which read, 'normal healthy man' - see Broverman et al., 1970). Official rates of mental morbidity are considerably higher amongst women than men (see Procek, 1980; Davis et al., 1985; Allen, 1986). The traditional explanations for this difference tend to be similar to the explanations of crime in women - only in reverse. Women are seen to be inherently more predisposed towards mental instability, this view stemming from the traditional interpretations of Freud's theory of 'penis-envy' (though see section on Psychoanalytic Feminist Discourse, which stresses the importance of Freud's concept of the unconscious in facilitating the ideology of masculinity and femininity) or, alternatively,

are assigned social roles which are less satisfactory and more stressful than men's (Smart, 1976). Whether married women are more inclined towards mental illness than single, divorced or widowed women is also a matter for debate and the results seem to have been inconclusive (Gove, 1972; Nathanson, 1975; Dominian, 1984). Of more importance than the technical marital status of women, or even the number of traumatic life-events experienced, however, is the meaning of the status and those experiences to women, their perceptions of themselves in relation to those experiences, their feeling of being in control (or not) or their low self-esteem (Brown and Harris, 1978). One of the most important factors influencing that perception is isolation. Women with no intimate, confiding relationship with their husband, women with a number of small children, women whose mothers died when they were young, women without employment outside the home are all seen to be 'vulnerable' to depression. The importance of the social worker's role in alleviating loneliness will be a recurring theme in this thesis but, at this stage, it seems important to suggest that the alleviation of loneliness was one of the greatest expectations the women in this study had of psychiatry and the one in which they seemed most greatly disappointed. The general adherence of psychiatrists to physico-chemical explanations and treatments conflicted with the women's intuitive understanding of their illnesses as 'forms of communication' (Jordanova, 1981).

Those psychiatrists who engage in psychotherapy have been accused of encouraging women to talk rather than act (Chesler, 1974) and of reinforcing the 'differential dialectic' of marriage (Bell and Newby, 1976) by focussing on the asymmetry of the doctor-patient (male-female, powerful-subordinate) relationship, whilst ignoring the 'objective facts of female oppression' (Chesler, 1974: 104). Yet, 'if the personal is a key site of female oppression....this is also a key site for women's

struggles' (Procek, 1980: 347). The Women's Movement has had no more influence on the women who most frequently consult psychiatrists than it has on those who commit crimes. They are not 'powerful revolutionaries' (Chesler, 1974: 53) - their behaviour 'represents a socially powerless individual's attempt to unite body and feeling'. In short, they desire to 'cope' (Davis et al., 1985; Allen, 1986).

As Jordanova (1981: 99) observes, 'their needs aren't dramatic but most often relate to long-term dissatisfactions and a sense of hopelessness'. Many never reach specialist psychiatric services, but, through their GPs' prescription pads, become dependent on the products of a highly profitable drug industry. But coping, with the help of medication, does not release the individual from the range of personal and family responsibilities, because she is not recognized as entering a 'sick role' (Davis et al., 1985). Ironically, then, whilst women are readily diagnosed as suffering from psychiatric disorder, their treatment denies them the status of a sick person.

This is particularly true in relation to the diagnostic category of 'psychopathic or personality disorder' (the latter being taken, in this thesis, to constitute a milder form of the former), which was used to describe several of the women in this study. Represented to the court in the diagnostic language of science, the psychopathically disordered offender is constructed as the member of a homogeneous group with a fixed pattern of symptoms. But, unlike other diagnostic categories, which imply certain causes, the psychopathic disorder is, by definition, often untreatable.³ It is an extraordinary situation - 'a masterly stroke of professional imperialism' (Carlen, 1983) - where professionals can claim the knowledge to define certain patterns of behaviour clinically, yet, because there is no apparent medical 'treatment', can then claim that the 'syndrome' does not, after all constitute an 'illness'. This has

particular implications for women since, as Allen (1986) observes, psychiatrists often use the label of 'personality disorder' where gender role deviance is the primary complaint. The label is used, however, 'not as a legitimation for intervention but as a ground for declining to intervene'. Instead, the person is held responsible for her actions and deemed to need either social work intervention or a discipline setting. Yet once in prison, such a person is frequently controlled by drugs (Home Office, 1983) because, in layman's terms, she is 'mad'. But to argue, with Gunn et al., (1978) that 'the concept of psychopathic disorder is used as a dumping zone for a host of problems which do not necessarily interrelate' is not to accept Szasz's theory (1973) that all madness is manufactured. It is to argue that the full implications of the use of psychiatric discourse should be explored and its appropriateness in particular circumstances, for people in particular conditions of existence assessed.

Much has been written about the controlling nature of psychiatric discourse. By locating the source and treatment of problems in the individual, and effectively closing other levels of intervention, the labels of health and illness - particularly mental illness - 'are remarkable "depoliticizers" of an issue' (Zola, 1972). Writers over the past 25 years who can be broadly grouped into the 'anti-psychiatry' school, have attempted to contextualise the concept of mental illness within the family (Laing and Esterson, 1964), the asylum (Goffmann, 1961) and the criminal justice system (Szasz, 1965). Theorists of the political left, such as Laing (Pearson, 1975) and Goffmann have concentrated on the need to preserve the 'self' in the face of untenable social circumstances; those of the political right, such as Szasz, argue the non-existence of the 'mind' and a reduction of all behaviour to voluntary conduct or physical disorder (Hirst and Woolley, 1982), the latter being

clearly amenable to scientific intervention, the former - where it is socially unacceptable - being controlled by explicitly judicial methods.

There is a danger in attempting to identify 'anti-psychiatry' as a unitary programme. Attacks on traditional psychiatry emanate from differing medical, moral and political interests and it has been argued that a distinction needs to be drawn between those writers such as Laing and Cooper who argue that the theories and practice of psychiatry 'stifle, block and distort the expression of a fully human consciousness' (Pearson, 1975: 19) and, in particular, Szasz who argues that the whole concept of mental illness is a myth which disguises the moral and political character of 'problems in living' (1973: 23).

The problem with Laing is that he posits, as does psychiatry, an individual confronting society. Whilst psychiatry locates the problems of society in the individual, Laing hypothesizes an 'essential' personality which can be fundamentally disconnected from the practices and institutions within which it exists. By arguing in this way, he ignores 'the substantial number of disorientated, depressed, suicidal or irresponsibly dangerous persons who need more than tea and sympathy' (Hirst and Woolley, 1982).

The arguments of anti-psychiatry (together with the liberal principles of the Mental Health Act 1959) may therefore have had unintended consequences for the treatment of mentally abnormal offenders. By undermining the faith that courts may have had in mental hospitals as alternatives to imprisonment, it can be argued that more people have been forced into the prison system - a move which Szasz would no doubt welcome. The faith which courts have had in mental hospitals has never been a wholly naive preference for treatment over punishment. The desire to control behaviour and achieve conformity has always been implicit in decisions to hospitalise, (Rothman, 1971; Scull, 1983). The importance

of the asylum as a space over which the doctor - as a wise man, rather than a scientist - can exercise total control (Foucault, 1965) is an essential piece of understanding when examining its use by courts as an alternative to imprisonment.

The traditions of the 'anti-psychiatry' schools and the historical/archaeological approach of Foucault have attempted to make 'madness' a relative concept, whose diagnostic categories and treatment consequences differ in meaning according to the specific conditions of time and place in which they are located. Interest in the 'identified patient' has been displaced by a concern to examine the environment of illness - the institutions within which illness is constructed. Relatively little attention has been paid, however, 'to home and work environments where similar questions about the social construction of pathology could be asked' (Jordanova, 1981: 101). This thesis argues that psychiatric discourse allows women who break the law an extremely restricted space in which to struggle for either their sanity or their insanity.

The women with whom this thesis is concerned are not those who, by bizarre and dangerous behaviour, challenge the whole fabric of society. They are those who suffer what Brown and Harris call 'the duller realities of affective disorder' (1978: 42) - and mild personality disorders. But whilst they argue that 'empirically, few people would confuse depressive symptoms with social rule-breaking', this can be disputed. The 'mad' acts of bizarre and dangerous behaviour are nowadays less likely to be seen as mental illness than as acts of pure wickedness. The implication of a reduction of moral responsibility means that only those women who are seen as basically powerless, safely gender-socialised and whose behaviour is perceived as of little social significance, can be allowed the redefinition of their behaviour as 'disordered' - and only then if they appear likely to be able to carry on 'coping' with the assistance of

medication. In other words, psychiatric discourse accepts responsibility only for those female lawbreakers who can be constructed as 'dull and insignificant, but potentially coping'.

Psychoanalytic Discourse

In attempts to regulate the behaviour of both parents and children, Freud's theories have been invoked by the political left, right and centre (Adams, 1983). On the one hand, he has been accused of 'ahistorical phallocentrism' - of ideologically reinforcing the oppression of women 'by describing the characteristics of femininity in terms of the immutable structures of the psyche' (Burniston, Mort and Weedon, 1978: 118) and on the other heralded as giving us 'the beginning of an explanation of the inferiorized and "alternative" (second sex) psychology of women under patriarchy' (Mitchell, 1974: 402). The discovery of the unconscious and its influence on the construction and organisation of sexuality has been used both to prescribe and proscribe and socialisation of women as wives and mothers. It has been the unavoidable Other to which all post-Freudian theorists of essential and non-essential womanhood have had to address themselves.

Perhaps the most comprehensive attempt to explore the significance to women of psychoanalysis was made by Mitchell (1974). Her thesis that, if properly understood, Freud has more to offer feminism than do his critics, has revived interest in psychoanalysis, particularly by feminist counsellors (Eichenbaum and Orbach, 1982), who see an understanding of women's material existence as mediated by their unconscious mental life to be vital to their personal (and hence political) struggle with the 'great antithesis between the sexes' (Mitchell, 1974: 50). Mitchell argues that Freud is analytical not prescriptive and that his significance lies in his identification of the myth which facilitates the ideology of masculinity and femininity.

'To Freud society demands of the psychological bisexuality of both sexes that one sex attain a preponderance of femininity, the other of masculinity: man and woman are made in culture.'

(1984: 131)

Of particular significance in this process is the recognition of castration - the recognition by women that they are lacking, that they are 'other', that they are 'different from normal people (who are men)' (Orbach, 1978: 24). Following this recognition, a woman can choose from three possible reactions (Mitchell, 1974: 96): she can fear her own sexuality and become inhibited and neurotic; she can refuse to abandon her sexuality (as represented by the clitoris) and remain in a pre-Oedipal 'masculine' phase; she can exploit the passive aims of her sexual drive, transferring her affection from mother to father and desiring the phallus, thus 'successfully' resolving the oedipal complex and becoming a 'normal' woman. Through this latter course, the woman embarks on an exchange relationship with the phallus, reproducing within the personal the economic relations of production which underpin capitalist society. Thus, the personal is political.

But if Mitchell re-awakened an awareness of the importance of psychoanalysis for understanding female psychology, she has been criticised for implying that femininity is essential and immutable and that the best that can be hoped for is a celebration of femininity - a glorification of oppressed characteristics (Sayers, 1982).

The debate which has followed Mitchell's re-reading of Freud has had a number of interweaving strands. It has been about the correctness or otherwise of giving primacy to personal consciousness over economic reality (Sayers, 1982); about whether desires and needs are constructed within capitalist relations or distorted by them (Coward, Lipshitz and Cowie, 1976); about the comparative importance of pre-Oedipal mother and Oedipal transformation/resolution of object relations (Chodorow, 1978);

about the rejection of a biological base to the unconscious in favour of its construction in the acquisition of language (Lacan, 1977). In short, it has been about two things: 'the concept of physical reality and the nature of the relation between the psychic and the social' (Adams, 1983: 43).

Central to this debate is the conflict between the reality and the representation of loss - what Adams calls the 'lack-in-being' (1983: 48). The obligation on the mother is, at one and the same time, to provide the objects that satisfy her child and to disillusion the child about the guaranteed predictability of such provision. Coming to terms with the unpredictability and uncontrollability of drive satisfaction is the essence of the Oedipal stage of development, but whilst the little boy can compensate for the loss of the mother by gaining identification with the father, (the phallus, the definer), the little girl is left to identify with the failed provider, the forever lacking mother, the Other, the defined.

Miller asserts (1976: 132) that 'the big secret that psychoanalysis found....is the secret of conflict itself'. For the little boy, the discovery of conflict is the entrance to power; for the little girl it is the portent of powerlessness. The underlying thesis of psychoanalysis is that little girls must be transformed if they are to develop into 'normal' women. They have to come to believe that their own desires and needs are not their own but someone else's and that they can only be satisfied through serving the needs of others. In this way, women allow themselves to become the 'carriers' for society of certain unresolved aspects of the total human experience - they allow men to off-load unresolved conflicts about their own sexuality' (1976: 23).

But women also 'know' that sexuality is not only about service and fulfilling the needs of others. Men may depend on the service of women

but they do not usually love them for that reason (or for that reason alone). Service may be essential but it is unattractive, so women must serve whilst giving the impression of not serving. Intrinsic to the role of normal womanhood is the concept of 'appearance'. 'Appearance' is an ambiguous word, for it means both 'what is seen' and 'what is not real'. It implies both visibility and pretence. Women are constantly exhorted to attend to their appearance - both physically and emotionally.

'Looking good' is of paramount importance (Coward, 1984). But the hidden messages in this exhortation are that the normal woman looks good even if she doesn't feel good (pretence for the benefit of others) and that she will feel good if she looks good (pretence for the benefit of self). The pre-occupation of so many women with their body shape and size reflects precisely this conflict between the felt reality of a woman's existence and her desire to present herself in an acceptable, conforming and attractive way to the world (Orbach, 1978).

Women, then, are always already NOT MEN and the experience of being female is that of being not male. Femininity is constructed on the site vacated by masculinity and this absence of maleness is manifested in two opposing sets of expectations, revolving around the socially ambiguous status of dependence (Eichenbaum & Orbach, 1984). On the one hand, femininity is characterised by self-control and independence. Being a normal woman means coping, caring, nurturing and sacrificing self-interest to the needs of others. It also means being intuitively sensitive to those needs without them being actively spelled out. It means being MORE THAN MAN, in order to embrace and support Man. On the other hand, femininity is characterised by lack of control and dependence. Being a normal woman means needing protection (Hutter and Williams, 1981). It means being child-like, incapable, fragile and capricious. It means being LESS THAN MAN in order to serve and defer to Man. .

Feminist rehabilitation of Freud has highlighted the importance of sexuality in human development and has led to a 'psychotherapeutic practice organised constitutively around questions of gender' (Allen, 1986). It has, therefore, provided the leverage for examining the association between being a woman and feeling inferior or abnormal in our society. Nevertheless, it has been argued (Allen, 1986) that feminist therapy 'attracts' a clientèle very similar to that attracted by traditional psychoanalysis - articulate, moderately wealthy women whose disorders are unlikely to be either so debilitating or so dangerous as to require hospitalisation or imprisonment. To many other women (including those in this study) - 'the "insightless", the impoverished, the dangerous and the inarticulate - feminist therapy has little or nothing to say' (Allen, 1986). In the context of the very real economic and educational deprivation with which many female lawbreakers contend, it may be materially counter-productive to exhort them to cease to serve and to reclaim conflict. Such exhortation, in the absence of appropriate material (not just emotional) support is more likely to lead to their construction within judicial and *penal discourse as being in* 'need' of a discipline setting!

Social Work Discourse

If the doctor can be described as the 'labeller, certifier, legitimator' then this makes him a very powerful person and, it has been argued, 'social workers are not in this league' (Huntington, 1981: 107). Huntington explores the conflict between the two professions of social work and general medical practice and argues that social workers are relatively powerless. They are seen to be the hand-maidens of medicine, engaging in maternalistic relationships with clients to complement the paternalistic relationships of doctors (1981: 137), despite the fact that they themselves believe they are a profession in their own right,

adopting a different approach to the problems presented by their clients/patients. It is, however, the nature of that alleged difference, as highlighted by Huntington, which is of present interest. When faced with problems of 'psycho-social distress....depression and anxiety', it is the doctors who 'appeared to feel bound' to eradicate the psychic pain accompanying these conditions, frequently by prescribing drugs. It is the social worker who argues that the presence of such pain 'would motivate the patient to look at his problem more deeply, to work on it and resolve it' (1981: 59). It is the doctor who appears to respond in a technical fashion to problems 'as presented'; it is the social worker who adopts the approach more traditionally associated with psychiatry and psychoanalysis.

Traditional Social Work

Individual social workers may indeed feel themselves in conflict with, and powerless in relation to, doctors for reasons of sex, age, life experience and role expectations (Huntington 1981) but social work discourse is, by contrast, very powerful precisely because it is overseen by psychiatric discourse, reinforced by diffuse legal powers, (Donzelot, 1979 , and has served the political programmes of both left and right wing governments (Gough, 1979). The traditional social work method of casework appropriates psychoanalytic theories and individualises social problems. People are poor and underprivileged because they are personally inadequate and the victims of defective upbringings. Although there has been, post-Seebohm, a move away from psychoanalytic casework, 'notions of individual or family pathology as the root of social problems remain influential in contemporary social work' (Langan, 1985: 31). Mainstream social work educators present the social work profession as comprising:

'society's response to a variety of problems posed by marginal individuals of many different kinds....society maintaining itself in a relatively stable state by making provision for and managing people in positions of severe weakness, stress or vulnerability....(and by) its emphasis on the idea of respect for the client, optimism for the future, and faith in the essential, or a least potential, unity of society.'

(Davies, 1981: 3-4 - emphases added)

This is not to deny that conflicts of interest may exist between the individual and the state, but the role of the social worker is seen as essentially one of reconciliation and, although it may frequently, in practice, fall short of its ideals, 'the profession of social work is living testimony to a political commitment to safeguard and further the welfare of all citizens' (Davies, 1981: 209).

This generalised commitment to 'humanist endeavour', the 'caring community' and 'the absolute right of every man, woman and child to independence and growth' (Davies, 1981: 213) finds more specific expression in 'the maintenance of family life in the face of disintegrating or atomizing influences that may naturally tend to undermine, loosen or at least change it' (Wilson, 1980). It has been argued that social work buttresses the nuclear family, but not in such a way as to render it autonomous and impervious to influence by the state (Donzelot, 1979). Rather, the family is to be seen as an agency of 'supervised reproduction', supported by means of 'contract and tutelage'. The means of achieving this objective vary with the class of family. The offer to the middle-class family is that of a contract, an alliance between the doctor and the mother. By promoting the mother and educator and medical auxiliary, the state secures its influence over the family and the mother increases her power within the domestic sphere. But for 'unstructured', 'rejecting' or 'deficient' families the objective must be achieved by a different means. The key site of intervention remains the woman as

mother, but it is now she herself who requires education and supervision - not directly, but through the medium of social work, with its emphasis on the 'needs' of her children and, consequently, on child psychiatry. The latter fills 'the space hollowed out by the search for a convergence between the prophylactic cravings of psychiatrists and the disciplinary requirements of the social apparatuses' (1979: 131). The psychiatrist is no longer content to treat illness but now wishes to promote health and has found a way to do this, 'without getting his hands dirty' (1979: 168).

Donzelot deliberately rejects what has become the standard Marxist analysis of the family under the capitalist Welfare State (Zaretsky, 1976; Wilson, 1977) but the result is that he neglects the oppression of women within the family. He sees 'contract and tutelage' as designed to enhance the position of women as mothers - albeit with ulterior motives - and he sees women as 'collaborators with the enemy', responsible for 'the demise of the patriarchal family in all its glory' (Barrett and McIntosh, 1982). Other writers (Wilson, 1977; 1980 and Mayo, 1977; Dominelli & McLeod, 1982; Hale, 1983; Langan, 1985; Hudson, 1985) have demonstrated the coercive influence of social work on women and the readily disapproving attitudes of social workers towards women who transgress the norms of wifeliness and motherhood. Mothers produce and socialise the next generation of workers and mothers are the guardians of morality in society. Motherhood is therefore promoted as a vocation, as a worthy career in itself (Calvert, 1985). But approbated motherhood is a) dependent motherhood within the structure of the nuclear family and b) responsible co-operative motherhood within the structure of the Welfare State. The normal mother is both economically and emotionally dependent on the father of her child and it is considered essential to that child's welfare to have two parents in situ in the family home

(Barrett and McIntosh, 1982). 'A mother without a male for support is seen as a social problem' (Calvert, 1985). It is therefore unacceptable for a mother to be only coping, nurturing and in control for she may thus render Man redundant. Motherhood must also be represented as a time of vulnerability and a time when the normal woman needs protection. Such representations of motherhood are based on psychological theories of child development and the 'maternal instinct'. Post-Bowlby doctors and social workers promote the nuclear family on the grounds that it satisfies both the needs of the child and the need of women to find self-fulfilment. Women, it is argued, 'need to be needed'.

But, motherhood alone is not allowed to exhaust the normal woman's domestic role. If unsupported motherhood is problematic, so too is single-minded motherhood, for the normal woman is not only a mother but also a wife. The ideology of wifeliness involves additional, conflicting expectations of coping yet not coping. Being a good wife means maintaining a clean, tidy, welcoming home, yet giving the impression of doing so with a minimum of effort, which leaves sufficient energy and motivation to be attractive, attentive and seductive. The home may be one of the few places offering a genuine outlet for women's creativity but that creativity is submitted to a visual ideal whose main statement is the absence of the work they do, and absence of conflict about that work' (Coward, 1984). Evidence of labour, conflict or mess is interpreted as evidence of failure, rather than as a true reflection of the reality of women's domestic lives.

This discourse of domesticity is legitimised by a 'knowledge' of child psychiatry and role psychology which is articulated at a number of levels. Privileged (predominantly male) professionals are empowered to circumscribe the behaviour of women through alliance or tutelage. Their power, however, is frequently delegated to (predominantly female) semi-

professionals (e.g. nurses and social workers) who mediate between them and the women who enter the roles of patient or client. These are the 'wise women' (Heidensohn, 1985) who, in addition to translating 'expert knowledge' into 'common sense' for the consumption of the always-already failing woman, also provide an authoritative role model of normal womanhood (Hutter and Williams, 1981).

Huntington talks of the deferential relationship between the (normally female) social worker and the (normally male) doctor; Donzelot talks of the contract alliance between the 'good' mother and the doctor, and the tutelary relationship between the social worker (sex unspecified) and the 'bad' mother. Hutter and Williams (1981) talk about 'women controlling women'. Social work has always been related to female roles within the family (Walton, 1975); it is about 'doing womanly things' (Wilson, 1972) - nursing, comforting, caring, nurturing and educating. The female social worker is a 'good mother' - she looks after those in need. But the ideal of personal service is underlain by the concepts of 'modelling' and 'discipline'. The female social worker is presented to her female client both as an 'imitable model of normal femininity' and as acting with 'a firm but caring maternal discipline' (Hutter and Williams, 1981: 30). The female client who challenges the state's definition of her and attempts to take control of her own life 'is labelled "anti-authoritarian", "aggressive", "problem mother" or "castrating"' (Wilson, 1977: 41).

Radical Social Work

Radical social work writing (e.g. Simpkin, 1979; Bailey and Brake, 1976; 1980; Bailey and Lee, 1982) has emphasized the political nature of social problems but has not achieved any great shift in the focus of social work discourse because, 'at the immediate level it is not clear that rehousing will help a depressed housewife....or that a better job

will stop a man beating his wife....behaviour takes on a momentum of its own' (Wilson, 1980). Some attempts to integrate theory and practice have been made by Corrigan and Leonard (1978) in generic social work and by Walker and Beaumont (1985) in the field of Probation practice but the use of such texts in social work training is not widespread. By and large, that training still sensitizes social workers (and the term here includes probation officers) to see problems in individual terms, and it is not, therefore, surprising that most social workers concentrate on the sphere of the personal.

Langan (1985) observes that whilst 'most social work clients and most social workers are women, the theory and practice of social work reflect little appreciation of the important questions of women's oppression'. Until recently, this has been as true of radical social work as of traditional social work.

Nevertheless, the call from feminist writers on social work for the development of a discourse which will link the personal and the political and which will stress the ambiguity of the family (Wilson, 1980) is beginning to be answered. The twin planks of this feminist analysis of social work are, firstly, a 'need to question thoroughly how women's needs and problems are defined and responded to both by....individual workers and by social work organisations generally' and, secondly, a 'need to examine both the criteria for the allocation of social work resources and the implications for women of such criteria' (Hudson, 1985: 649). One of the surfaces through which such an analysis emerges is the mechanism of 'consciousness raising' (Longres and McLeod, 1980), which 'has developed as a method of helping women to reflect upon their experiences as women and to name previously private experiences....(It) can also offer women an unpatronising opportunity to feel cared for and supported' (Hudson, 1985). Consciousness raising has also led female

social workers into an awareness of their own oppression within agencies and the contradictory effects on them as workers of an ideology which sets them up as role models and controllers of female clients.

The extent to which a feminist analysis of social work does, or can, directly inform social work practice and its organisation within statutory agencies is now emerging as a political issue alongside (though somewhat behind) concerns about racism in social work. The contradictory effects of the discourse are apparent at a number of levels. The vocabulary of 'consciousness raising' is felt by some practitioners to be alien to many of their female clients. At least one has preferred to substitute the term 'confidence raising', defining it as 'encouraging female offenders to become less passive and apologetic' (Whitlock, 1983). Other feminist social workers have found that this ideology of working in a non-oppressive way with women itself raises fundamental conflicts for social work practice. In a graphic and moving account of her own journey towards 'Becoming a feminist social worker', Sue Wise (1986) observes that 'much feminist analysis of social problems was of little use in helping me to analyse and guide my practice'. Its simplistic view of women's oppression had 'little to say about women and men who fall outside the usual gender stereotypes'. It did not equip her, for example, to deal with the fact that women, as well as men, abuse children, that some mothers do collude with sexual abuse and that some women's refuges are so violent and dirty that some women are driven back to violent men by their experiences of them. Her endeavour to reconcile her feminism with her social work led her to conclude that the proper function of social work (and one which is compatible with feminist concerns about powerlessness) is:

'the policing of minimum standards of care for, and protection of the rights of, the most vulnerable members of our society - some of whom are women,

but most of whom are not.'

(Wise, 1986: 2)

The consequence of these contradictions for the women in this study, is that, whilst they may openly be held responsible by traditional social work for the problems of their families, they are also precisely the women who are unlikely to be the recipients of the 'confidence raising' methods of radical social work because, despite their own powerlessness and vulnerability, they are viewed as the perpetrators of harm to members of society who are even more vulnerable - namely, children. They are the women who appear to act with sufficient agency to exclude themselves from the category of the 'genuinely' powerless and victimised.

Conclusion

This literature review has illustrated the ways in which various distinct, yet interweaving discourses have attempted to lay claim to knowledge about troublesome women. Each discourse is characterised by (a) its setting - both historical and physical; (b) its code - its language, form and style of documentation and (c) its non-discursive practices (see Donzelot), and each has sought to locate the 'not quite normal' woman within its own theoretical site. Yet we are left with the feeling that this woman has not been adequately described. She is criminal, yet not criminal, feminine yet not feminine, sane yet not sane, motherly yet not motherly. She is at the same time corrigible, yet incorrigible, definable yet indefinable. The discourses seek to converge but there remains an unappropriated space. The search for the essentially normal woman - the unspoken Desire of these discourses - has failed. The indescribable remains - a 'mere black hole in someone else's universe' (Ardener, 1975). Yet the parameters of that hole have the effect of caging-in and every discourse constitutes a bar to that cage which confines and renders these women muted:

<u>Discourse</u>	<u>Attempts but fails to describe the not-quite-normal woman as:</u>
Criminological	Born, socialised or victimised into lawbreaking.
Judicial	Excused by reason of domesticity, sexuality or pathology.
Penal	Needing to be disciplined, medicalised and feminised.
Gynaecological	Normally abnormal and not responsible <u>or</u> abnormally abnormal and therefore responsible.
Psychiatric	Dull and insignificant but potentially coping.
Traditional Psychoanalytic	Inferior and needing to serve.
Radical Feminist Therapy	Needing to reclaim conflict.
Traditional Social Work	Problem mother in need of tutelage.
Radical Social Work	Powerless, victimised and in need of consciousness raising.

It is by the concomitant recognition and denial of those parameters that this thesis aims to interrogate the space between the lived experiences of those female lawbreakers who defy description - the nondescript women - and the attempts (and failures) by privileged discourses to fore-close on those experiences.

CHAPTER THREE

NOT MAD ENOUGH, NOT BAD ENOUGH: FIFTEEN FEMALE LAWBREAKERS AND THEIR DISCURSIVELY CIRCUMSCRIBED STRUGGLE TO DEFY DESCRIPTION

Introduction

Chapter One of this thesis set out the theoretical framework within which the process of knowing (Foucault, 1972) about female lawbreakers is being located. That framework is one which facilitates the analysis of both existing and new knowledge in terms not only of its content and internal coherence but of its authorship, its audience and its material conditions of existence (Burton and Carlen, 1979).

Chapter Two, deconstructed existing knowledge of female lawbreakers by isolating a number of interweaving discourses which at times reinforce and at times contradict each other. Integral to the analysis of each discourse, it was claimed, is its authority, by which is meant the power of, or status ascribed to, those who speak it. Authors whose status is privileged, those who are powerful speakers or definers are termed 'agents of signification'. That is, they construct, through their definitions of reality, the field of social relations in which others (in this case, female lawbreakers) move. Taken together, these interweaving discourses form a 'chain of signification' which circumscribes the struggle of such women to defy description.

In this chapter, and those which follow (Chapters Three to Seven) the theoretical framework set out in Chapter One is used to construct readings of the empirical data obtained from interviews with female lawbreakers, magistrates, solicitors, psychiatrists and probation officers. This chapter begins to examine the process whereby female lawbreakers are (or are not) constructed as 'criminal women'. This is done in two ways. Firstly, it is demonstrated that the discourses outlined in Chapter Two over-determine the pedagogic and pathologising dimensions of

the routine descriptions of female lawbreakers. Secondly, the accounts of their lawbreaking activity given by fifteen women and their probation officers are deconstructed. It is argued that the female lawbreaker is routinely offered the opportunity to neutralise the effects of her lawbreaking activity by implicitly entering into a contract whereby she permits her life to be described or re-presented primarily in terms of its domestic, sexual and pathological dimensions. The effect of this 'gender contract' is to strip her lawbreaking of its social, economic and ideological dimensions in order to minimise its punitive consequences. Many female lawbreakers accept this deal; some reject it outrightly (Carlen et al., 1985).

There exists, however, a group of female lawbreakers who create particular problems for the criminal justice system because they neither accept nor reject the 'gender contract'. They are the women who are constantly on the margins of categories - never sufficiently this or that - and seeming to defy description. They never appear to be 'dealt with' to the system's satisfaction. Despite (or because of) everyone's best endeavours, they remain 'nondescript' - out of reach and untouchable. The ground on which their relationships are built appears to be shifted constantly within the contradictory discourses of the definers and they seem to frustrate all offers of 'help' and structure. They are women who tend not to assert themselves or to challenge openly, but who use a variety of subterfuges to sabotage attempts to observe, assess, classify and change them. Their responses to such attempts are akin to those of Victoire, the mother of the 19th century French triple murderer, Pierre Riviere (Foucault, 1975: 181) who

'felt that any contract remained a trick, an institutionalized assault - as if in a frozen arrested, perpetual combat. She set herself up as the everlasting cancellor of contracts, perpetually put them in doubt, and shifted their

signs by setting them moving again - which is tantamount to repudiation and challenge.'

It may be argued by some that there exists a similar group of male lawbreakers who are persistently resistant to influence. They do not, however, defy description in the same way. On the contrary, the mushrooming provision within the criminal justice system (since the introduction of Community Service in 1972) of 'alternatives to custody' has been based on an acknowledgment of the challenge presented by 'persistent petty' male lawbreakers. Similarly, current models of juvenile justice (Rutherford, 1986) emphasize the 'normality' of adolescent male delinquency and the legitimization of minimal intervention by potentially stigmatising 'helping' agencies. And, if all else fails, our soaring prison population testifies to the acceptability of dismissing persistent male lawbreakers as 'unmotivated, incorrigible rogues'. The nondescript female lawbreaker presents a greater moral dilemma, since her ideological (if not her material) positioning at the centre of the family requires that greater efforts be made to rehabilitate her within the dominant discourses of femininity, in particular the discourses of domesticity, sexuality and pathology, which are detailed below.

There are several reasons why the women on whom this study is based are not, and cannot be, presented here as 'typical' criminal women. Firstly, since they are unclassifiable, they are, by definition, 'untypical' and secondly, as Carlen (1985: 10) argues, 'there can be no such thing as the "typical" criminal woman'. Thirdly, they may not, in practice, represent the majority of women on Probation caseloads. Nonetheless, it is argued here that the search for 'nondescriptiveness' - the desire to evade the consequences of being seen as a stereotypical WOMAN - is a crucial (and hitherto neglected) element in the activity and behaviour of many female lawbreakers. It is the hypothesis of this study that exploiting the material and ideological conditions that are

preconditional to nondescriptiveness is one of the ways in which female lawbreakers - and, indeed, all women - say 'no' to the oppressive nature of stereotypical descriptions and prescriptions. It is to be hoped that by exploring the material and ideological conditions which determine both these prescriptive descriptions and the restricted range of responses available to women a fuller understanding of women's lawbreaking and its relationship to class and gender discrimination in society will be achieved. It is argued (see Introduction) that:

1. Nondescript women are subject to multiple discursive oppression which requires that any investigation of their experiences be subjugated to typifications of 'normal femininity' articulated by 'experts'.
2. As speakers about their own condition, these women are disqualified because of their inability and/or refusal to articulate the paradigms of domesticity, sexuality and pathology which dominate explanations of their behaviour.
3. Nondescript women are strategically constructed by judicial, medical and welfare personnel as the programmable objects of discourse and subjected to technologies which regulate their minds and bodies through power relations which are local and immanent. They are effectively offered a contract which promises to minimise the consequences of their criminality by rehabilitating them within the dominant discourses of femininity.
4. Resistance to such description tends to be individualistic, inconsistent and, in some senses, self-destructive but has the important effect of undermining the authority of official discourses and keeping open the possibility of the

creation of new knowledge about them. By exploiting the contradictions in the material and ideological conditions that render them nondescript, these women are able to wrest a limited degree of power from the dominant groups by whom they are muted.

The Gender Contract

Crime and law enforcement are presently male-dominated worlds and women who enter them threaten the maintenance of the power relationship between men and women (Smart, 1976; Edwards, 1984; Heidensohn, 1985; Adler, 1987). Criminality is assumed to be a masculine attribute and women criminals are therefore perceived to be either 'not women' or 'not criminals'. Many women who break the law also have the attributions of normality which provoke the latter description and thus tacitly enter into a contract which seeks to minimise the consequences of their criminality by rehabilitating them within the dominant discourses of femininity.

Femininity is constructed on the site vacated by masculinity (see Chapter Two) and the women in this study experienced 'being female' as being NOT MALE. Those experiences were mediated by their bodies, their minds and their social interaction. The discourses within which those experiences were structured were constituted by sets of relationships which cluster around notions of Domesticity, Sexuality and Pathology. These pedagogic and pathologising dimensions themselves interrelate and are not mutually exclusive. As with the images of a kaleidoscope, each discourse organises its components uniquely but not arbitrarily.

Domesticity

Motherhood is regarded ambivalently in our society and was experienced as such by the women interviewed. The young mother is a

valued category (Ardener, 1978) and it is assumed that the normal young woman is either a mother or a mother-in-the-making. Adolescent girls are regarded as potential mothers and their behaviour as daughters is viewed as indicative of their capacity for future home making and child caring (Hudson, 1983). Becoming a mother is one of the ways in which the normal woman demonstrates that she is 'more than Man' and that, in both a literal and metaphorical sense, she encompasses Man. Yet the ability to reproduce is a characteristic which inspires in men fear as well as celebration. The myth that 'women are witchlike in being able to give birth to live beings' (Lipshitz, 1978) remains deeply embedded in the collective consciousness. The realisation that the internal processes of the female body are crucial to, yet beyond the control of, men provokes anxiety and a desire to contain, to limit and to punish. Thus, if the physiological processes of reproduction cannot be controlled by men (beyond insemination), the material and ideological conditions under which women become and remain mothers are tightly structured.

Approbated motherhood is a) dependent motherhood within the structure of the nuclear family and b) responsible, co-operative motherhood within the structure of the Welfare State (see Chapter Two). The family is seen as an agency of 'supervised reproduction', supported by means of 'contract and tutelage' (Donzelot, 1979). The means of achieving this objective vary with the class of family, but the key site of intervention is always the woman as mother. Donzelot, however, is less concerned with the oppression of women as mothers than with the 'demise of the patriarchal family in all its glory' (Barrett and McIntosh, 1982). In this he reflects a wider concern within patriarchal society about the threat to male authority within the family posed by the celebration of motherhood. The challenge of omnipotent motherhood is rebutted in two ways. Firstly, the power of the mother is regarded

as only temporary. As she ages, the mother is forced to relinquish her power as she becomes increasingly devalued in the eyes of her family. The normal middle-aged mother is the 'martyr mother' (Arcana, 1979). She is the mother who serves but is unappreciated. But the widest dissemination of the 'Ideal Homes' ideology (Coward, 1984) is through the influence of women on each other as peers. Such influence is informed by media images and given voice in the practices of neighbourliness. Neighbourliness reinforces domesticity through the opportunities for friendship, gossip and competition provided by proximate and visible daily living. It functions at the interstices of the public and private worlds of women and fashions their self-image through exercises in comparison which are both other - and self-generated. Neighbourliness was both a source of comfort and fear for the women in this study.

Sexuality

The discourse of domesticity is premised on a theory of the functional equivalence of men's productive and women's reproductive roles in society. In its most enlightened form this is expressed in the hackneyed phrase, 'equal but different'. It has become axiomatic in any more radical analysis of women's position in society that the concepts of sex and gender which are implicitly conflated in this premise must be separated. Just as men's physique constitutes no pre-ordained imperative to work, so women's ability to give birth to and feed children does not of itself imply any instinctive drive to build and maintain a nest for life. Yet it would be simplistic to argue that women are confined to domesticity only by external pressures to conform, however subtly mediated. Such pressures may reinforce, but they do not create what the normal woman 'knows' about her own femininity.

Post-Freudian attempts to explain the development of gender consciousness - or sexuality - have struggled with contradictory inter-

pretations of his writings (see Chapter Two). The discovery of the unconscious and its influence on the construction and organisation of sexuality has been used both to prescribe and proscribe the socialisation of women as wives and mothers. The power of the professional to invoke a reading of Freud which supports politically conservative theories of healthy gender role adjustment has been challenged by a feminist reading which argues that what Freud really did was to identify the myth which facilitates the ideology of masculinity and femininity.

As we have seen in Chapter Two, the underlying thesis of psycho-analysis is that the discourse of sexuality is a discourse of conflict. Through the socially 'successful' resolution of this conflict, the woman embarks on an exchange relationship with the phallus, reproducing within the personal the economic relations of production which underpin capitalist society. Thus the personal is political.

The construction of femininity through the discourse of sexuality is thus dependent on a gender consciousness that develops from early childhood through the unconscious mental struggles of the little girl to make sense of the conflicts and contradictions of the reality of her physical and emotional world. Such struggles are reinforced by privileged intermediaries such as teachers, social workers and doctors, and by those trapped within the same ideologies - mothers, fathers, family relations and friends.

Pathology

It has been argued here that the ability of women to give birth to live beings invokes a fundamental fear of the female body and arouses in men a need to limit and control the environment of personal relationships within which a woman is allowed to become a mother. It has also been argued that the ideology of femininity is internalised by women from an

early age and that the development of gender consciousness is a struggle which a woman has with herself as much as with other people. In this relationship with herself, the normal woman becomes aware of the conflicting expectations of the in-control/out-of-control dichotomy.

This dichotomy is further manifested in a discourse which constructs female biology as a disease. The description of the normal woman as 'sick' derives from two sources. Firstly, the normal woman's body is perceived as intrinsically 'abnormal' in that, though capable of more than a man's body, it is less reliable. Menstruation, pregnancy, childbirth and the menopause all result in 'hormonal imbalance' - a phrase which connotes that the woman may herself be 'imbalanced' during those times. Secondly, women are statistically over-represented amongst those who use medical facilities; in particular, they appear to suffer disproportionately from ostensibly gender-neutral mental illnesses. The normal woman accepts and accommodates the 'naturalness' and inevitability of the power of her bodily functions to dictate her self-image and restrict her behaviour. The corollary of this ideology is that women who suffer gynaecological dysfunctions, or who reject the controlling influence of the reproductive cycle (e.g. by taking the Pill) require alternative means of control involving moral judgments about either their sexual proclivities (the 'promiscuous' woman) or their genuineness (the 'malingering' woman).

This poses in practice a dilemma relating to the eligibility of the women in this study for inclusion in the medical category 'normal woman'. The dilemma is exemplified in the ambivalent attitudes of medical and judicial personnel towards the potentially excusing condition, Pre-Menstrual Syndrome (Dalton, 1964, 1978), but similar debates surround the assessment of the significance of post-natal and menopausal depression. Very different material consequences flow from the differential definition

of such experiences as either clinical conditions or socially and culturally constructed rites of passage and underpinning these practices is the need for women to prove themselves 'genuinely' sick.

The assessment of women's eligibility for medical help constitutes a 'practice of exclusion' from normal femininity. Allen (1986) has observed that disturbances arising from women's reproductive cycle - along with those deviations of gender role that have come to be defined as 'personality disorders' (sexual deviance, violence, rejection of family relationships) - have been increasingly marginalised by the medical profession. Since they do not display a 'proper' psychiatric symptomatology, women so categorised are excluded from 'proper' psychiatric treatment and are increasingly defined as requiring social work intervention. Thus certain women (such as those in this study) are doubly restricted by being constructed within a discourse of sickness which nevertheless denies them access to the means of health.

Sickness arising from the 'normal abnormalities' of the female body is perceived invidiously to be a universal quality of womanhood. Women, however, also appear to be more susceptible than men to those illnesses of the mind whose aetiology is not directly gender-related. Two ideologies dominate explanations of this. Conventional psychiatry takes for granted that women are either inherently more vulnerable than men to mental illness, or that the ineluctable pressures of their social existence (an existence which is nonetheless essential for the general health of society) predispose them to becoming mental casualties. Feminist critiques of conventional psychiatry argue that such pressures are created by the patriarchal order and/or that psychiatry itself controls women through the imposition of gender-biased diagnostic categories and through mechanisms of treatment which encourage women to believe that the resolution of their problems lies in the alteration of

their 'mood' by medication or talking.

The effectivity of the discourse of sickness, unlike that of the discourses of domesticity and sexuality, emanates from the elasticity of its parameters. The boundary between normality and abnormality is constantly blurred. Chronic dependence on minor tranquillisers prescribed by general practitioners, for example, represents such a widespread form of 'sickness' amongst women that it has almost ceased to be regarded as sickness at all. Three factors contribute to this elasticity. Firstly, health is implicitly defined in relation to maleness, in the sense that the 'normal' female body is regularly and predictably abnormal or 'unhealthy'. Secondly, the emphasis in the ideologies of both femininity and current psychiatric practice on 'coping' (Allen, 1986) predisposes women to define themselves as 'sick' when they feel they are not coping. Thirdly, the centrality to the construction of femininity of the dilemma of having to be both 'in-control' and 'out-of-control' poses a routine problem for the normal woman. Whilst she may perceive herself to be crossing the boundary between normality and abnormality many times a day, that journey is itself a feature of normal femininity. The point at which a woman becomes 'genuinely' sick is therefore never clear. Such confusion serves to control women's behaviour and may explain the preventive use of medication by many women who learn to dread the debilitating self-hatred that results from not knowing whether they are - or should be - in control of their bodies, their minds and their relationships with other people.

Femininity in our society is constructed within the dimensions of DOMESTICITY, SEXUALITY and PATHOLOGY. The ideology of normal womanhood communicates to women that certain features of her social existence are essential, natural and inevitable. Those features are the centrality of family relationships, differential social experiences arising from

biological differences, and the predisposition of the female body and mind to malfunction. The normal woman is expected to accommodate conflicting expectations that she is both in and out of control of her body, her mind and her relationships. Underpinning these demands on women is the assumption that authoritative knowledge exists about the respective functions and needs of men and women, and about the behaviour that is appropriate to their roles in society. But that knowledge, stemming from the sciences of gynaecology, psychoanalysis, psychiatry and psychology, contains contradictions, gaps and discontinuities. Its presentation as unified, coherent and continuous requires privileged mediation.

Chapters Four to Seven examine how that 'knowledge' of deviant women is mediated by magistrates, solicitors, psychiatrists and probation officers. This chapter seeks to explode the myth of the 'normal woman' by deconstructing the deviant careers of fifteen women who cannot be classified neatly as either 'normal' or 'abnormal'. They are women who, when they break the law, confound the criminal justice system.

Fifteen Women - The Material Circumstances

The ideology of normal womanhood is mediated to women not only by powerful agents of signification, who claim to have authoritative knowledge about appropriate feminine behaviour, but also through women's own material conditions of existence. The essentially normal woman may not exist, but neither does the universally oppressed woman. Class, race and age all affect the extent to which women can resist the ideological discourse of femininity and the relative significance of these variables is a question of historical, social and economic specificity, rather than theoretical debate. It has been argued, for example, that teenage girls find it particularly difficult to fulfil role expectations because adolescent femininity is constructed within two

conflicting discourses - adolescence, with its emphasis on change, rebellion and increasing independence, and femininity, which emphasises passivity, dependency and the permanence of relationships (Hudson, B., 1984). The experiences of elderly women 'who face the major agony of seeing a life-long partner sicken and eventually die' are at least in part dictated by class differences in sickness and mortality amongst men (Phillipson, 1981) and in financial ability to employ nursing assistance. Similarly, it is theoretically an unresolvable debate whether black women are oppressed more by racism, class or gender. Lees (1986) observes that

'Oppressions based on class, race, religion or region have in common their ability to rely upon and indeed a tendency to strengthen, family and community as forms of solidarity and resistance on the part of the oppressed. Sexual oppression, however, is located within these very institutions.'

The fifteen women in this study were predominantly working class, poorly educated and living in conditions of poverty. Most had no income other than Social Security Supplementary Benefit and most, for various reasons, were bringing up children on their own. As women on welfare, they were fairly typical of the 10.7% of families identified by the 1981 General Household Survey as being headed by lone mothers (Family Policy Studies Centre, 1984). They were also likely to be 'regarded as deviant (if not criminal) by virtue of their lack of economic and emotional dependence upon a male' (Cook, 1987). The material position of such women ensured that they were ill-equipped to resist the ideological pressures of privileged discourse relating to femininity, yet they were, ironically, also uniquely ill-equipped to meet its demands. Consequently, these women found themselves trapped by the moral judgments of professionals, who were also confined by the ideological and material conditions of their jobs (see Chapter Two).

The unspoken Gender Contract offered to these women, based on assumptions about both willingness and capacity to fulfil mutually agreed obligations, was therefore simultaneously binding yet unfulfillable.

Fifteen Women - The Official Accounts

In the course of interviewing probation officers (see Chapter Seven), thirteen women were identified to me as 'troublesome' women, who might nevertheless be prepared to discuss their experiences of the criminal justice system. Of these thirteen, nine eventually agreed to be interviewed, two refused and two agreed, but failed to keep two pre-arranged appointments. Of the remaining two women, one responded to my letter in a local newspaper and one was interviewed during my visit to a Special Treatment Unit. (Her probation officer was contacted subsequently and interviewed.)

With the exception of Fiona, all the women in this sample were the subjects of Probation Service files. Their biographies had been officially written; they had been assessed and classified, not simply in terms of their lawbreaking activity, (see Table 1) but in an endeavour to 'make sense' of the multitude of 'facts' which constituted their official lives (see Table 2). Certain dimensions featured strongly in these official accounts, others were notably absent. Domesticity, sexuality and pathology were prominent; class and race barely, if at all, mentioned. Again with the exception of Fiona, all the women could be described as 'working class' and all lived in council-owned accommodation. Only Fiona and Kathy worked full-time. Pauline and Janet had part-time jobs but the rest were unemployed. Yet unemployment and poverty were not features of their official biographies. Racism was totally absent as an issue. Only one woman (Carol) was black and neither she, nor her probation officer identified racism as contributing to her situation.¹

Table 3.1: Fifteen Women: Offences and Previous Convictions

<u>Name & Age</u>	<u>Offence</u>	<u>Sentence</u>	<u>No. of Pre-Cons</u>	<u>Nature of Pre-Cons</u>
Fiona (21)	Conspiracy to cause G.B.H.	Fine	None	-
Jackie (21)	Motoring and drink-related	Probation s.3	Numerous	Theft Drink-related Prostitution
Eileen (29)	DHSS fraud	Probation	One	Theft
Pauline (30)	Shoplifting	Probation	Several	Shoplifting DHSS fraud
Janet (36)	Deception & Shoplifting	Probation	Several	Shoplifting
Ann (36)	Deception, DHSS Fraud & Theft of Electricity	Voluntary After- Care	Several	Burglary Damage
Carol (37)	Shoplifting	Community Service	Numerous	Shoplifting
Gwen (38)	Damage	Probation s.3	None	-
Veronica (40)	Shoplifting	Suspended Sentence Supervision	Several	Shoplifting Drink-related Assault
Maureen (46)	Theft	Probation	Numerous	Theft
Ivy (58)	Shoplifting	Probation s.3	One	Theft
Kathy (20)	Manslaughter	Probation s.3	One	Deception
Linda (24)	Failed to send Child to School	Probation	Several	Theft Burglary Assault
Susan (30)	Shoplifting	Probation s.3	One	Shoplifting
Jean (36)	Child abduction	Voluntary After- Care	Numerous	Damage Assault Prostitution

Lawbreaking/Deviance

Of the 15 women, 13 had at least one previous conviction and 8 had several. Such statistics immediately rendered these women difficult to classify, since the 'typical' female lawbreaker is a first offender. In 1984, for example, 33% of the 15,000 women on probation on 31 December had no previous convictions, compared with 15% of the 38,000 men on probation (Home Office, 1986b). Recidivism is thus regarded as a typically masculine quality and one which raises questions about the 'femininity' of the female lawbreaker in the minds of those who deal with her.

Similarly, although the majority of the offences committed by these women were 'typical' offences of theft (mainly shoplifting) and fraud or deception, a number were not. Maureen's offences were seen as typically feminine:

'Always with Maureen, it's been a case of deception - fiddling DHSS or shoplifting or something like this - and usually the offences are triggered off by family pressures at home. They get in a mess with their money and budgeting and housekeeping.'

(Probation Officer 9 on Maureen: Vol. 2, p. 222)²

Linda's offence of failing to send her child to school could be regarded as role-inappropriate (the equivalent, perhaps, of status offences amongst adolescent girls). Jean's offence of baby-snatching, on the other hand, was regarded as highly 'gender-inappropriate', since 'real' women would never do such an aggressive and uncaring thing. Gwen, Jackie, Fiona and Kathy had also committed 'unfeminine' offences, since they involved aggressive behaviour which was considered unacceptable in women. For example,

'It appeared that she upsets the neighbours and she rants on a bit and she was pretty paranoid and she'd finished up throwing a couple of bricks

Table 3.2: Fifteen Women: Dimensions of Lawbreaking

<u>RESPONDERS</u>					
<u>Name & Age</u>	<u>Lawbreaking/ Deviance</u>	<u>Domesticity</u>	<u>Sexuality</u>	<u>Pathology</u>	<u>Consequences</u>
Fiona (21)	Conspiracy to cause G.B.H. No previous convictions.	Single, living at home, father dies. 'Good daughter'.	Offence committed in a group with men - under their influence?	'Depression' / fear of discovery by parents/guilt re father's death/remorse.	Crown Court trial; 'lenient' sentence of £100 fine.
Jackie (21)	Numerous motoring and drink-related offences. Long record. In Care 12-16 for truancy and theft.	Married with one child. Husband in prison for assaulting her.	Admitted prostitute. 'Promiscuous'.	Assessed as personality disorder'.	Placed on probation with condition of in-patient treatment at Special Treatment Unit.
Eileen (29)	DHSS fraud. 1 previous conviction but known to probation and social services since 14 when parents divorced.	Married three times. 4 children subject to matrimonial supervision - 1 with grandmother, 3 on 'At Risk' register. 'Suspect mother'. Husband in prison.	Unwise choice of partners. Beaten by husband. 'Promiscuous?'	History of 'attention-seeking' overdosing, treatment for 'personality disorder'.	Placed on probation for 2 years.

Table 3.2 (cont'd)

<u>Name & Age</u>	<u>Lawbreaking/ Deviance</u>	<u>Domesticity</u>	<u>Sexuality</u>	<u>Pathology</u>	<u>Consequences</u>
Pauline (30)	Theft (shoplifting). Several previous convictions for shoplifting and DHSS fraud. 2 previous probation orders.	Divorced ('Innocent victim'). Two children. 'Good mother'. Lonely, isolated.	'Intelligent lady'. Inadequate husband. Offences seen as expression of sexuality.	Assessed as needing group psychotherapy for 'guilt complex'.	Placed on probation Attends and enjoys.
Janet (36)	Deception & theft Several previous convictions.	Married with 3 children. 'Respectable' but with possible marital problems.	Offences committed in context of 'normal' feminine conduct - i.e. selling hampers, shopping. But second offence seen as 'defiance' (i.e. not feminine).	Referred by P0 for psychiatric treatment.	Probation for deception but Community Service as 'alternative to custody' for theft.
Ann (36)	Forged prescription, broke into meter, DHSS fraud. Previous convictions include burglary, damage.	Married with one child (not husband's) in Care. Husband has record. 'Inadequate mother'. Massive debts - won't accept help.	Both she and husband aggressive when drunk. Prostitutes. 'Hasn't reached rock bottom yet'.	Drug and alcohol problem. Won't accept treatment.	Initially placed on probation but breached conditions. Suspended sentence, then prison - prefers prison to hospital.

Table 3.2 (cont'd)

<u>Name & Age</u>	<u>Lawbreaking/ Deviance</u>	<u>Domesticity</u>	<u>Sexuality</u>	<u>Pathology</u>	<u>Consequences</u>
Carol (37)	Theft. Long record including prison.	Separated. Four children who go into Care when Carol is in prison.	Unwise choices of partner. Cohabits with violent men.	No psychiatric referral. Sees self as stealing by compulsion.	Perceived as 'professional'. Given Community Service.
Gwen (38)	Damage to own (Council) property. No previous convictions.	Single. One child in Care.	Unmarried, without support/control of man.	History of psychiatric treatment.	Narrowly avoided remand in custody. Remanded to hospital. Probation with condition on in-patient treatment.
Veronica (40)	Theft. Previous breach of probation. Several previous convictions, including assault on husband.	Divorced with two children. 'Suspect mother'.	Alcohol problems Lacking male support.	'Psychopathic personality disorder with excessive drinking habits'.	Crown Court; Suspended Sentence Supervision Order.
Maureen (46)	Theft. Long record including prison.	Married but frequently separated. Family now grown up but in Care in the past. '4 very disturbed children'. 'Inadequate mother'.	Aggressive & unmanageable but also victim of husband's abuse.	Long history of poor physical and mental health. Multiple diagnoses, including 'personality disorder'.	Probation - no feasible alternative.

Table 3.2 (cont'd)

<u>Name & Age</u>	<u>Lawbreaking/ Deviance</u>	<u>Domesticity</u>	<u>Sexuality</u>	<u>Pathology</u>	<u>Consequences</u>
Ivy (58)	Theft of jar of coffee. One previous conviction many years earlier.	Divorced, grown up children all away from home. Lonely, isolated.	Unfaithful to husband. Lacking support/controlling influence of man.	History of psychiatric treatment but 'too lucid' in court.	Placed on probation for 3 years with conditions of outpatient treatment.
<u>NON-RESPONDERS</u>					
Kathy (20)	Killed sister - murder reduced to manslaughter. One previous conviction for minor deception.	Single, lived with family. 'Good daughter'. 'Normal' teenager.	Unwise choice of boyfriend. Sister tried to persuade her to give him up - K. stabbed her.	Suspected epilepsy.	Probation with condition of treatment but never seen. 'A tragic case'.
Linda (24)	Failed to send child to school. Previous convictions for burglary, theft and assault.	Single with 2 children. Recently moved from parents' to own house. Had been 'problem' teenager.	Lacking support/control of a man.	As a teenager was school phobic, attempted suicide, temper tantrums. Inpatient treatment.	Probation with 'psy' complex involvement - social services and Education Welfare.

Table 3.2 (cont'd)

<u>Name & Age</u>	<u>Lawbreaking/ Deviance</u>	<u>Domesticity</u>	<u>Sexuality</u>	<u>Pathology</u>	<u>Consequences</u>
Susan (24)	Shoplifting. One previous conviction.	Divorced and remarried. Child in Care in the past but home now.	Very conscious of weight. 'Attracted' violent, drinking men.	Anorexic? Phobic anxiety, depression, agoraphobia.	Probation with condition of treatment.
Jean (36)	Baby-snatching. Previous convictions for damage, violence and prostitution Prison.	Married but separated. 4 children in and out of Care. Has abandoned children on occasions. 'Bad mother'.	Has engaged in prostitution. 'Deprived and undersocialised' Erratic, violent etc.	Psychopathic personality disorder, not amenable to treatment and not mentally ill.	Two year prison sentence - appeal failed - not granted parole. On voluntary after-care.

through her own Council house windows. But evidently, it had been a series of problems with the police and they had been almost forced to bring her in.'

(Probation Officer 2 on Gwen: 160)

None of the women had received their current sentence for offences related to prostitution, but two had previous convictions for such offences. Four women had previous convictions for burglary, damage or assault.

The majority (10) of the women were on probation. Five of that group had conditions attached to their probation orders that they should receive medical treatment although, as will be seen later, the inclusion of such conditions appears to bear little relation to the extent of 'illness' diagnosed. Of the remaining five women, one had had no involvement with the Probation Service beyond the preparation of a report for court (Fiona). Three had been on probation in the past but were currently experiencing different forms of contact with their probation officers (Ann, Veronica and Jean). One (Janet) was serving both probation and a Community Service Order (imposed at two separate but chronologically close court appearances). Carol had a history of contact with the Probation Service but had not actually been on probation in the preceding ten years. She was currently serving a Community Service Order.

Domesticity

The ages of the women ranged from 20 to 58 years and only the two youngest (Kathy and Fiona) were not mothers. Of the remaining 13, only three had failed to attract the tutelary gaze (Donzelot, 1979) of the 'psy' agencies in relation to the quality of their mothering. Ivy's children were already grown up and had left home when she committed her offence; Pauline and Janet were considered 'good' mothers. Ten of the

mothers, however, either had children currently in the Care of the Local Authority (Ann, Gwen, Jean), had had children in Care in the past (Maureen, Carol, Susan) or were under suspicion of being 'bad' mothers (Eileen, Veronica, Jackie, Linda). Jackie and Linda had both been threatened directly with the removal of their children unless they resolved their problems. For Linda,

'the problem does appear to lie with her lack of organisation of herself and her family, to make sure that David does attend school on a regular basis'.

(Social Inquiry Report on Linda: 122)

Amongst other things, she was instructed,

'to seek psychiatric and medical help with her personality disorder in an attempt to organise her own life and thus provide a secure and stable home for her children'.

(Case Conference notes: 123)

Jackie's problem was excessive drinking and promiscuity (see below). Her psychiatric report contained the following comments:

'Failure to cooperate with our treatment which includes aversion treatment to alcohol followed by regular Antabuse treatment will constitute a breach of the terms of probation....She has been told that unless she does something about the problem, she will jeopardise the chances of keeping custody of her daughter.'

(279)

Her probation officer (16) informed me:

'That was put in for the sake of the magistrates who were clearly thinking of sending her to prison, and he (the psychiatrist) was very aware of that.'

(279)

Here, Jackie's status as mother is simultaneously hailed (to compensate for her abnormal sexuality) and denied to enable her to be described within psychiatric discourse as a judicially recognisable subject, in need of both treatment and punishment. Eileen had been under suspicion

for a long time:

'We've always had our doubts....and we had a conference recently....we were imagining all sorts of things....we had to look into it. Some of them could probably be substantiated but they're not sufficiently bad to warrant serious action....I think more than anything those kids will suffer more mentally than physically.'

(Probation Officer 6 on Eileen: 201)

The suspect nature of the women's mothering was exacerbated by their suspect 'wifeliness'. Only one woman (Janet) could be considered 'normal' in the sense that she was still living with her first husband, who was the father of her children, and even her marriage was seen as possibly contributing to her offences, according to her probation officer:

'One of the things I think we ought to be looking at fairly closely is Mrs. T's marriage. Sometimes I tell her off because I don't think we're looking at the questions behind her depression.'

(Probation Officer 21 on Janet: 71)

Maureen's marriage, though long-standing, was highly unstable. She had left her husband on numerous occasions. Her psychiatrist was

'more convinced every day that her problem is basically a marital one. I think that, as a psychiatrist, I have very little to offer this lady. Most of her problems are social ones'.

(Psychiatrist on Maureen: 109)

Three other women (Jean, Ann and Jackie) were currently married to their first husbands but all three men also had criminal records. Ann and Jackie's husbands had been to prison for assaulting them; Jean's husband also abused her when he was drunk. Susan was married for a second time, apparently to a man who was, according to her probation officer, 'much more enlightened'. Her first husband, however

'used to beat her and drink a lot, and made all the decisions and had quite an old-fashioned view of marriage.'

(Probation Officer 17 on Susan: 285)

It had been during this marriage that her child had been taken into Care. Eileen had been married three times and her present husband was currently in prison, having been 'shopped' by her. He had threatened to divorce her and apply for custody of the children but Eileen was planning for a reconciliation on his release.

Three of the women (Ivy, Veronica and Pauline) were divorced. Pauline was viewed by her probation officer, as the innocent victim of an 'inadequate' man who had an affair with another woman whilst working away in Scotland.

'Then he brought this woman home to meet his wife, and she was ringing when he came home at weekends - all this sort of thing she had to cope with. He really did show how inadequate he was, because he couldn't make the break but he couldn't decide to stay with his wife.'

(Probation Officer 5 on Pauline: 184-5)

Ivy, on the other hand, received somewhat less sympathy. Her husband also left her for another woman, but her own unfaithfulness was seen as contributing to the break-up of the marriage. Veronica was certainly not viewed as an innocent victim, since she had a history of assaulting her husband when she was drunk.

The remaining three mothers (Carol, Linda and Gwen) might well have been defined as bad wives (or even bad women), since they were not wives but should have been! Carol was separated and cohabiting with a man who was not the father of all her children, whilst Linda and Gwen had never lived with the fathers of their children.

The two women without children were assessed as daughters. Fiona and Kathy (despite killing her sister!) were both perceived as 'good, dutiful daughters', living at home and being portrayed as 'normal' teenagers.

Sexuality

The extent to which these women were deemed to have made 'unwise' choices in relation to men was implicit in discussion of their domestic situations. It was also, however, an independent theme underlying most of their official biographies. At one extreme, Pauline's plight was described as

'a very sad history of a very inadequate man and a very adequate lady who then decided to become inadequate so that she didn't overshadow her husband.'

(Probation Officer 5 on Pauline: 184)

Kathy, too, had been taken advantage of by a feckless man:

'Her feelings for this man were so strong that they blinded her to reality....Everyone could see that this man was simply using her, except Kathy herself.'

(Social Inquiry Report on Kathy)

Carol, Ann, Jackie and Susan were all seen as 'attracting' men who drank heavily and were violent, the implication being that such men met psycho-sexual needs in them. Jackie's probation officer described her relationship with her husband.

'He'll black both her eyes and walk out. She's very capable of winding him up and he didn't strike me as being a particularly nice character.'

(Probation Officer 16 on Jackie: 276)

Three of the women (Eileen, Jean and Jackie) were described as promiscuous. According to her probation officer, Eileen had a reputation for having numerous boyfriends and this was seen to be antithetical to the welfare of her children:

'She's that sort of girl....she loves her children, she doesn't want them to go away....but she's got needs of her own which are far away from the needs of the children really.'

(Probation Officer 6 on Eileen: 204)

It was assumed that a woman who attended to her own sexual needs must therefore be either neglectful of the needs of her children or else be placing them in 'moral danger' through her own bad example.

Jackie's probation officer recounts a confrontation between her and her psychiatrist:

'By this time she'd been pretty worked up. The doctor told her that she was an easy lay for a drink. I suppose that's fairly accurate, but I suppose she's not used to being talked to like that.'

(Probation Officer 16 on Jackie: 275)

One might question the medical status of the psychiatrist's assessment of Jackie but, as will be seen in Chapter Six,

'forensic psychiatry is authoritatively charged with the legal, judicial and moral management of law-breakers.....'

(Carlen, 1986, emphasis added)

Additionally, as white, middle-class professional men, psychiatrists are, within capitalist patriarchal society, ascribed the right to exercise both verbal and physical control over working-class women (cf. Messerschmidt, 1987 . Jean's promiscuity dated back to her adolescence, according to her probation records:

'Went out every night and became "lad mad" - says she was described as the "sex bomb of the estate".... highly promiscuous at the time and this was encouraged by her fellow workers. Confided in older women. The way in which she kept the older women interested was to tell her exploits and this increased her need to engage in such exploits.'

(Social history on Jean: 124)

More recently, however, her promiscuity was seen as a form of revenge of her husband:

'During her husband's imprisonment, Mrs. M prostituted herself and although there was some financial gain, the reason seems to have been anger with her husband, projected on to the men concerned, for whom she had no feelings.'

(Social history on Jean: 125)

In committing their offences, whether these women were seen as being either too much influenced by men, or too little influenced, they were always seen in relation to men. Fiona's offence was committed in a group, most of whom were men. Her lenient sentence may well have reflected a feeling that, as the driver of the 'getaway' car, she had not been directly involved in the assault, but had been under the influence of her male companions. Ann and Maureen were both perceived to be aggressive and unmanageable, but their behaviour was aggravated by the aggression and drinking of their husbands. Gwen, Linda, Veronica and Ivy, on the other hand, were seen to be in need of supervision because they lacked male support (and, by implication, male control) (see Eaton, 1987 on bail decisions relating to women in magistrates' courts).

Pathology

Thirteen of the fifteen women had had some involvement with psychiatrists, although only five had conditions of treatment written into their probation orders. Very little attention was given in the official accounts to the gynaecological dysfunctions referred to earlier in this chapter and such lack of concern appears to reinforce theories that working-class women do not have the same access to the excusing condition of 'inherent fragility' as do their middle-class sisters (cf. Ehrenreich and English, 1973; Edwards, 1981). Much greater concern was shown about the 'genuineness' of the women's claims to sickness and this concern was buttressed by the elastic nature of the definition of the 'disturbance' invoked (see Chapter Six for an expansion of this point). As I have argued elsewhere (Worrall, 1978), the vaguer that definition, the more likely it is that the 'incongruity' between 'womanhood' and 'criminal-ness' will be maintained. Pauline, for example, was

not suffering from any clearly definable mental illness at all, yet, as we shall see she had greater access to the excusing condition of pathology than any of the women - possibly because she was intelligent, articulate, personable and potentially middle-class!

One woman who received little sympathy, despite having been hospitalised for anxiety and depression, was Ivy. She pleaded not guilty to stealing a jar of coffee on the grounds that she was confused as a result of recent ECT and drug therapy. Unfortunately, however, she presented herself in court as being extremely clear and lucid, so that she failed to convince the magistrates of her innocence. Ivy's attempt to medicalise her own condition was negated by her failure to present herself as 'muted'. She had been too articulate and competent and, ironically, had thus discredited the very defence of her actions she was attempting to make. The trivial nature of her offence also seemed to reinforce, rather than reduce her perceived responsibility for her actions. Had she, like Kathy, killed someone, the situation might have been different.

Kathy killed her sister, by stabbing her with a kitchen knife. Yet Kathy, like Ivy, was placed on probation for three years with the condition that she receive psychiatric treatment. Kathy was originally charged with murder but under psychiatric examination, it emerged that she may have had a history of epilepsy. It is worth quoting in detail from the report prepared to illustrate the effectiveness of psychiatric discourse in rendering violent women harmless (Allen, 1987):

The circumstances of the offence are unusual. K attacked her sister, whom usually she is very fond of. There does not seem to be any obvious motive for the fierceness of the assault. Her behaviour before the act and shortly after it seems to have been relatively unremarkable. K's family describe her as a pleasant young woman and certainly our observations of her while she was here was of a well-behaved, pleasant woman. I understand that, while on bail, she has

resumed her job. Her EEG is abnormal. It is indicative of instability rather than frank epilepsy. Instability of an EEG can occur in the absence of epilepsy and can occur in about 50% of normal persons, but unstable records tend to be found in young women of K's temperament and level of immaturity. However, the instability in this case is so marked and is considerably accentuated by the consumption of alcohol. Instability of an EEG often correlates with an aggressive and violent behaviour. On balance, therefore, taking into account K's previous personality, the absence of any comparable assaults, the suddenness and severity of the assault, the lack of any obvious motive, her markedly abnormal EEG, which is accentuated by alcohol, I feel at the material time, she was suffering from such abnormality of mind as would substantially diminish her responsibility for her act and bring her therefore, within the Section 2 of the Homicide Act 1957.

(119)

The charge was reduced to one of manslaughter and, in passing sentence, the Judge said to Kathy:

'I'm not going to dwell on the facts. This has been a great burden to you. This is not a case for punishment. Everything possible must be done to help you in the future.'

(Probation file on Kathy: 120)

Following her conviction, Kathy had no contact whatsoever with Dr. A (see Chapter Six) despite his agreement in court to treat her. Two years later, her probation officer (not the original one) wrote:

'K asked me about the question of Dr. A and his lack of contact and I suggested that, as there had been no contact with Dr. A for so long now, it was pointless to try and resume contact with him, that is unless K particularly wanted to see him for any reason. Clearly K was not keen to follow anything up in the psychiatric treatment area and I was quite happy to go along with this. I tried to relieve K's anxieties on this question by suggesting that any initiative with regards to treatment would have been made by Dr. A in the past and presumably he sees no reason to continue contact with K. K was quite happy with this explanation and feels that she has no need whatsoever to see Dr. A at the time.'

(121)

Psychiatric discourse had, it seems, enabled Kathy to get away with murder, whilst Ivy continued to receive ECT for stealing a jar of coffee. The reason for this, as Allen also argues (1987), is that Kathy's crime was so incongruous with her status as a 'very typical teenager' (Social Inquiry Report) that her status as the responsible author of her crime had to be revoked. She had to be presented as not intending and not understanding the consequences of her action. The alternative explanation - namely, that a hard-working, respectable family (according to the SIR) had produced a fratricide - was unthinkable. Yet, in terms of management, Kathy presented the court with few problems, for that same family could be trusted to control and contain her with the minimum of outside intervention. Ivy, on the other hand, was more problematic for, despite the trivial nature of her crime, there was a congruity about her (albeit petty) criminality which indicated the presence of agency (i.e. responsibility). Her social status as a divorcee also suggested an absence of familial control over her behaviour. In her case, therefore, psychiatry was employed not to reduce culpability but ensure management, suggesting that the criminal justice system is more concerned with the maintenance of social order than with the retributive punishment of crime.

The remaining women exhibited a variety of 'symptoms' which had been broadly classified into two categories, depending on the profession's perception of their 'genuineness'. Pauline, Susan and Janet were all diagnosed as suffering in some way from anxiety or depression. All three were seen as co-operative and amenable to treatment. Pauline, in particular, was regarded as a 'rewarding' case:

'She's a good person to work with, very intelligent and you can reason things through with her - it's one of those cases where you can put your theory into practice - it's quite good for me.'

(Probation Officer 5 on Pauline: 184)

The remaining women were described more negatively as 'attention-seeking', 'manipulative', 'psychopathic' and/or as having 'personality disorders', in some cases exacerbated by 'excessive drinking habits'. Some, like Gwen, Veronica, Eileen and Maureen, had long histories of psychiatric treatment which was deemed to have 'failed' and they were retrospectively re-assessed as 'malingerers'. Others, like Ann, Jean, Linda and Jackie were seen as not amenable to conventional treatment, although Jackie was considered suitable for a Special Treatment Unit. According to her probation officer,

'She created and called Dr. G this, that and the other and threatened to kill me. And they said "This girl - she's perfect material for this Unit"!!'

(Probation Officer 16 on Jackie: 278)

As Dr. A remarked (see Chapter Six), treatment of people with personality disorder 'has to be undertaken by enthusiasts'!

Interpellating them as domesticated, feminine and sick?

It is evident from these official accounts that the routine practice of classifying and describing female lawbreakers in particular ways has proved inadequate in relation to the women in this study in providing either explanations of their past lawbreaking activity or management of their future behaviour. Far from demonstrating that they are domesticated, feminine and sick, these women have evaded (often by their sheer passivity) the controlling effects of such categorisation. They have presented themselves variously as:

- a) suspect or non-mothers and failed wives;
- b) sexually indiscriminate and promiscuous women, unsupported and uncontrolled (or uncontrollable?);
- c) not mad enough or too mad, alcoholic and malingering.

Yet none of these women would be described as 'villains' (cf. Carlen et

al., 1985) either. Nor are they ideologically committed to protesting against capitalism or patriarchy. They live very mundane lives - some seeing themselves as more 'respectable' than others, some more angry than others, and all of them struggling in relative poverty.

How then would these women begin to describe themselves and their circumstances?

Fifteen Women - Their Own Accounts

Thirteen women were identified to me by their probation officers as 'troublesome' women, who might, nevertheless, be prepared to discuss with me their experiences of the criminal justice system. Of these, two (Jean and Linda) refused to be interviewed. Jean, according to her probation officer, was 'going through a crisis' and was preoccupied, whilst Linda was apparently not interested in discussing her experiences. Two other women (Susan and Kathy) both agreed to be interviewed but each failed to keep two appointments made with me. Mention has already been made of the trap in which these women are caught, whereby they are rendered incapable of either refusing or fulfilling the contract which is offered to them in the name of help. The mechanisms of resistance which are available to them are those which inevitably invoke from their would-be helpers moral judgments about 'unreliability', 'manipulativeness' and 'deceitfulness'. For those would-be helpers to consider any other, less positivistic, explanation for the women's behaviour would threaten the 'taken-for-grantedness' of existing social relations. Failure to keep appointments and general elusiveness characterised many of the women who were discussed with me by their probation officers. Few of them could be accused of deliberately failing to keep in touch (which would constitute a breach of the conditions of a probation order) but time and time again, women would present reasons/excuses for being unable to keep office appointments (children's illnesses, lack of bus fares,

repair men/Social Security visitors expected etc.) yet would also find themselves unexpectedly called out of their homes when the officer had arranged to call on them. Even probation officers who laid on transport to bring women to women's groups or clubs run at their offices expressed frustration at the numerous abortive journeys made by volunteers or ancillary workers to women who were 'out' or whose children were suddenly and conveniently 'poorly'. These women, like Victoire Rivière (Foucault, 1975) were the everlasting cancellers of contracts. Their potency lay in their ability to agree to, yet to fail to honour, even the simplest contracts about times and places of physical meetings. By presenting constantly moving targets, such women unwittingly succeeded in outwitting officials and evading assessment, classification and control. For some women, their children - and their social workers, the consequences of such elusiveness can be tragic, especially when there is real concern for the welfare of children (cf. the Jasmine Beckford case). But whilst women remain distrustful of those in authority who are directed to 'help' them and, furthermore, feel powerless to influence the nature of that help, they will continue to put themselves literally 'beyond help' and 'out of reach' by simply avoiding contact.

Nine women, therefore, agreed to be interviewed and two more, as previously mentioned, were interviewed under different circumstances (Fiona and Jackie). In the interviews they talked about their lawbreaking, their personal circumstances, their attitudes to courts, solicitors, psychiatrists, probation officers, social workers - and to themselves. Common themes emerged from their stories - loneliness, fear, low self-esteem, bewilderment, suppressed anger and, above all, a sense of not being listened to, heard or understood. But there were differences and contradictions too. Some felt they had been sentenced harshly, but were still appreciative of the help they had received from individual

professionals. Others felt they had been dealt with leniently, despite denying criminal intention or mens rea, in its strict judicial sense.

Lawbreaking/Deviance - The Construction of (Wo)men's Rea (cf. Cousins, 1980)

With the exception of Carol ('I'm a shoplifter': 74) the women did not see themselves as 'real' criminals. They felt that what they had done was either not really criminal, was a kind of 'compulsion' or had been done out of economic necessity. In its strict judicial sense, they denied criminal intention.

'I've not done anything really terrible. It was just a fight that got blown up into something big. I was done for conspiracy. I only drove the car. There was one other girl and five boys.'

(Denial of seriousness) (Fiona)

'On the form it says, "with intent to deprive so-and-so of the aforesaid jar of coffee...." and it didn't seem - well, I'd been in hospital.'

Denial of intent) (Ivy: 110)

'I defrauded my husband of his supplementary benefit - I cashed his Giro....I went to the police station myself to own up - they didn't find out....I agreed to probation, but I didn't think it would be two years.'

Denial of seriousness) (Eileen: 49)

'It was for food for my children - it wasn't stupid things like cigarettes or drink or toys.'

(Insistence on excusing condition) (Veronica: 49)

'I sort of get this feeling that I've got to get something off the shelves - and when I've done it and got out of the shop, I think it's great.'

Insistence on compulsion) (Janet: 71)

'One day my little girl....showed me under her mattress - £86. She said it belonged to a boy - he wanted her to look after it. He'd said I could borrow £30....so I borrowed it....The police came and I explained, but they said I should have reported it.'

(Denial of intent) (Maureen: 102)

'I didn't really think I'd done anything wrong.'

(Denial of criminality)

(Gwen: 91)

Even Carol was indignant about the latest offence with which she had been charged³, although she was pessimistic about her chances of acquittal:

Carol: 'I'm not guilty, I didn't do it, yet I'll probably get found guilty because of my record. They look at your record and they'll say "I don't believe she didn't do something like that".'

AW: 'But they're not supposed to know your record until you're found guilty.'

Carol: 'Aye, well that is true, but the judge knows me.'

(75, 76)

Despite their denials of guilt, all of the women, like Carol, eventually resigned themselves to being 'found guilty', partly because of their low self-esteem and generalised sense of guilt about being a woman and thus 'always-already' failing, but partly as a result of being treated as though they were 'always-already' guilty. Pauline illustrates the former:

'I expected a lot worse and, quite honestly, I felt I deserved a lot worse - I still do....I still feel that I haven't been punished - yet nobody else seems to.'

Fiona, Ivy and Gwen illustrate the latter:

'At court I stood between two prison officers thinking "I'm really ever such a nice person - I shouldn't be here." In my statement, I signed for a lot of things I didn't say because I was afraid. You say things, but not in the way they put it over in court - out of context.'

(Fiona - changed plea during trial)

'They're only doing their job - the prosecuting counsel - he's got to make it hard, hasn't he? And I did do wrong.'

(Ivy - defended herself,
but was found guilty: 117)

'When I was in the van, he told them over the microphone that I was a prisoner. I said to him, "I'm not a prisoner". Well, I wasn't at the time - or was I? He said, "We've now got the prisoner" and that upset me.'

(Gwen - arrested after throwing a brick through her own house window)

Uncertainty about appropriate pleading was not always alleviated by solicitors and the women expressed mixed feelings about the role of solicitors in court. None of the women saw themselves as 'engaging the services' of solicitors or 'giving instructions' (see Chapter Five), nor did they feel in any way in control of their relationship with their solicitor. Some, though, did express gratitude for their solicitor's efforts:

'I think that the solicitor does a lot - it's the way he puts your case over....I think that really makes a difference....because you can tell a story or explain things different ways and it comes out differently.'

(Pauline: 54)

'I mean really it's not up to them - they try their best....He was very good. I thought I'd go down....'

(Veronica)

But even Veronica did not seem to feel very much in control of the relationship, especially once her solicitor had engaged a barrister for the case:

'I didn't really have much to say to him. He just said, "Don't worry". He didn't say one thing or the other.'

(92)

This inability to express oneself to a solicitor or barrister featured in other women's accounts:

'He got a barrister from London but he didn't give me any advice about the plea. The trial went on for five days and at the end I changed

my plea to guilty.'

(Fiona)

'I couldn't talk to him like I'm talking to you now. I couldn't fight for myself. I couldn't defend myself. I couldn't give him enough evidence to go on to defend me.'

(Maureen: 102)

Maureen perceived her encounter with her solicitor as something of an ordeal - as one more situation in which she was required to justify herself and her actions. Like most of the women, she felt herself to be insufficiently articulate to benefit from this 'right' to be represented. The whole point of representation - namely, the opportunity to compensate for nervousness, ignorance and inarticulacy - was lost on these women, thus providing an excellent example of the 'technology (see Chapter One) of muting'. Women defendants are given a formal right to a space where they can tell their story in their own words to someone who can then reconstruct it in language which is acceptable to the court. Yet the experience of most women is that they must already have structured their tale in a way which is acceptable to the court. Yet again, as with their encounters with psychiatrists, working class women experience the double oppression of both gender and class discrimination in their dealings with white middle-class professional men. Carol - perhaps the most articulate of the women (but also the only black woman, which may or may not have been significant) - challenged her solicitor by playing according to the stated rules of the game - and suffered the consequences!:

'I don't care, I just talk to them....I tell them the truth and own up if I've done it. Then they advise me to plead guilty or not guilty. But he always says with my record I'll get sent down. I don't think they should do that. I think they should fight for you.'

(79-80)

Two of the women did not have solicitors in court. Gwen, despite

her contact with a probation officer, appeared unaware of her right to representation:

'I think if you've never been in trouble before,
you don't know, do you?'

(85)

She did, in fact, approach a solicitor after she had been sentenced to probation with a condition of in-patient psychiatric treatment. Not surprisingly, she did not get much satisfaction at that stage:

'I went to a solicitor to see if he could get
me off the probation so that I could get out
of the hospital but he said there wasn't much
they could do because they couldn't do anything
but put me in hospital.'

(86)

Ivy was the one woman who had decided to defend herself, although her reasons for doing so were not entirely clear:

AW: 'Why did you not want a solicitor?'

Ivy: 'I don't know really....'

AW: 'Was it a question of thinking you would
have to pay?'

Ivy: 'Yes, I suppose it was....My doctor did write
a letter, which I can't understand was not read
out prior to my being sentenced. I feel that
that should perhaps have been taken into
account....'

(111)

Ivy believed that her medical condition rendered her 'morally' innocent of the offence with which she was charged but she seemed unable to distinguish between its legal status as a defence or as mitigation. Consequently, she had not known when to introduce her doctor's letter into her evidence and the result was that it had been overlooked. Perhaps more ironically, Ivy's competence in defending herself later had negated her claim to having been confused at the time of the alleged offence. Her failure to remain mute had been her downfall. In the end,

she admitted reluctantly:

'Maybe I should have had a solicitor but we had one for that other do and it never got us anywhere.'

(115)

Many of these women's experiences are common to all defendants (cf. Carlen, 1976). There is, however, a specific gender dimension to their experiences which is characterised by

a) the particular social disgrace of being a criminal woman:

'It's far less acceptable for a woman to commit a crime. A man sometimes gets a boost from it - a woman loses any respect she had once people know she's got a record.'

(Fiona)

b) the sense of guilt and low self-esteem which many women have about themselves as women:

'I'm inclined to blame myself and that has a lot to do with my state now - I'm blaming myself for being a failure.'

(Ivy: 113)

c) the apparent difficulty which many women have in communicating what they really want to say (if indeed they know what they really want to say) to men in positions of authority - in this case, to solicitors and barristers. This apparent difficulty may be not so much a failure on the part of women to articulate their needs, as a failure on the part of men in authority to listen to the particular mode of expression in which those needs are being communicated.

d) the particular requirement that women who break the law must compensate for their 'unfeminine' criminal behaviour by presenting themselves as domesticated, sexually passive and constitutionally fragile.

Before turning to this last requirement and examining these women's own account of their domesticity, sexuality and pathology, it is important

to note that all the aspects of the gender dimension which have been outlined have a class bias in their effects. Educated and financially independent women, although still experiencing the stigma of criminality, have more options in the ways that they choose to re-present themselves or allow themselves to be re-presented. They may still suffer from a 'sense of guilt' and 'low self-esteem' but they have the articulacy and the finances to escape the most confining of stereotypical descriptions. Working-class women have to devise more devious escape-routes.

Domesticity

a) Motherhood

Undoubtedly and according to all concerned the most important relationships for those women who were mothers were those with their children. Whether or not their children were in their care, their attitudes towards them were profoundly and inextricably bound up with their attitudes to their lawbreaking. On the one hand, children were cited by the women as both the cause of and the justification for criminal activity. On the other hand they were seen by them as exerting a restraining influence both on the women themselves and on those sentencing them.

- Committing crime for the children

The desire to provide material goods, which they could not otherwise afford, for their children motivated most of the shoplifters. Some saw themselves stealing 'essentials'; others saw their activity as a way of providing 'extras':

'It was food for my children. It wasn't stupid things like cigarettes or drinks or toys - you know, rubbish.'

(Veronica: 93)

'I like to keep my kids nice and I like to have a nice house.'

(Carol: 77)

'It was Joanne's birthday and I'd gone to town to buy some candles for her cake, and it started that I picked up something in Woolworth's and I was thinking "I'd like to buy this....I can take it and nobody will know, and I can give it to her, although I can't afford it". So I did, and then it just snowballed.'

(Pauline: 56)

The desire to be the stereotypically good mother and provider had led some of the women into activity which could ultimately deprive them of the very people they sought to provide for.

- Committing crime because of the children

For some of the women, however, the influence of their children on their lawbreaking was more complex. Gwen's offence, for example, seems to have been committed at least in part from a sense of frustration and desperation about the difficulties she was experiencing in maintaining contact with her daughter in Care:

AW: 'Can you remember why you put the bricks through the windows?'

Gwen: 'It was everything all muddled up. It was my neighbours and because I hadn't got my daughter.'

(84)

For Maureen, her children and their behaviour, together with her husband's behaviour, constituted the chaotic domestic environment from which she could escape only into crime or mental illness:

'I went into the living room and the table was full....and I'd just put the baby down and I wanted to rest and everybody was just gorging at the television. So I walked in and tipped the table up and said, "You can sodding well clean this lot up between you - I'm not the slave here".'

(99)

Feeling unsupported and unappreciated featured in both Maureen and Ivy's accounts. Maureen's strongest criticism was reserved for her daughter:

'My eldest son will....go out and buy me an extra bag of coal. He looks after me, he appreciates what I'm doing for him. But my daughter - she thinks I only want her for her money! Sometimes I feel like punching her in the face, 'cos I'm very highly strung.'

(105)

Ivy had two daughters and a son, all of whom had left home - as had her husband. She disliked her son's girlfriend and blamed herself for her son's departure from home at the age of 28:

'I find that I'm obsessed with losing my son - I felt I had driven him away.'

(113)

She spoke movingly of the increasing loneliness she felt as her family gradually left her:

'At night - you've been used to having five people there, then it's four, then it's three, and now it's me. I find it very hard to live alone. Not so much in the day, but at night. I miss the key coming and the voices.'

(113)

It had been suggested to me by some probation officers that women often failed to face up to the 'reality' of their lawbreaking and its consequences. A probation officer working in a women's prison, however, argued that, for many of the women he met, providing for their families was reality. Even when those families had disintegrated, the women continued to define themselves in relation to them and to be, in his words, 'rooted in relationships'. (The concept of 'rootedness' is explored further in Chapter Seven.)

- The effect of crime on the children

Only Carol spoke of her criminal activity having any direct effect on her children:

Carol: 'It's embarrassing. You don't like them to know. I mean, they know what I'm doing, but I wouldn't take them out and let them see that I'm doing it.'

AW: 'Have any of them ever been in trouble?'

Carol: 'Joe was in trouble once - he stole some sweets.'

AW: 'What happened to him?'

Carol: 'Nothing - he was too young. But I've told them, if they ever do anything I'll get the police. There's one thief in the house and that's enough. They don't need to do anything because I'm doing it for them.'

(79)

Although Carol felt some 'embarrassment' about her children's knowledge of her activity, one could also sense that she took pride in sacrificing her own reputation for her children's well-being. Her son's foray into crime concerned her not so much because she felt she might be setting him a bad example but because it represented 'ingratitude' and a lack of appreciation of her as a good mother and provider.

For most of the women, however, their greatest fear was that of losing their children as a result of their criminal activity. Carol's attitude was thus not typical. She regarded imprisonment as an occupational hazard and even as a 'holiday' - 'because it's a break away from the kids'. Her children went into Care while she was in prison and visited her regularly. She had no fears that they might not be returned to her:

'I put them in myself and they couldn't take them off me. I don't ill-treat them and they get everything they want.'

(78)

Maureen had been far less confident when she had gone to prison:

'It says "voluntary" on the papers but....they watch them and if they think they need "Care and Protection", you don't get them back. I kept thinking, "I won't get her back". I was more worried over losing my child than anything.'

(103)

Eileen feared that her children would be taken into Care when she went to court because:

'My husband's in prison....I've had two broken marriages.'

She had not responded previously to help offered by her probation officer or psychiatrist:

Eileen: 'I didn't want any help. It's only been since court) that I've wanted anybody to help me.'

AW: 'Did you think that your children were going to go away.'

Eileen: 'Yes, in (court) I did - and since then I'll sit and listen.'

(50)

Jackie had received a similar message:

'The magistrate said "We want you to sort yourself out - we're thinking of your child - we don't want to see you here again".'

As an inmate of a Special Treatment Unit, Jackie was separated from her daughter during the week but allowed to go home at weekends. She viewed the separation very much as a punishment, rather than as the unavoidable consequence of receiving treatment in a hospital setting. She regarded her sentence as a kind of imprisonment, from which she could not resist the temptation to 'abscond':

'I don't want to stay here much longer. I miss my daughter terribly. I really love her and she loves me - she clings to me. That's why I ran off last week. You just sit here all day listening to

records and I think of all the things I could be doing at home. I've got a nice home - I keep it really clean and tidy.'

The notion that, by sitting and 'listening to records', she might be learning to be a better mother - when she could be keeping her home 'nice' - clearly struck her as faintly ridiculous.

Fear of losing their children dictated the attitude of these women to their Local Authority social workers. With the exception of Carol ('I need a shoulder to cry on - I'm not too old for that'), those who spoke about their social workers did so in fairly negative terms. Eileen summarised the general view:

'I fetched 'em (children) into the world and I didn't fetch 'em in for the Welfare to grab hold of 'em.'

(50)

She admitted, reluctantly, that her present social worker was being quite helpful 'because they've just got a holiday granted for my children', but reiterated her general view:

'I always thought social workers were nasty people who all they wanted to do was take people's children into Care.'

Gwen also experienced her previous social workers as unhelpful, condescending, authoritarian and in a hurry:

'Social workers don't seem to be much help - that's why I lost my little girl....They give you the feeling that they're doing you a favour when they're helping you....They seem to show more authority to you. When you tell them your problem, they're in and out, and you're still there with your problem.'

(88)

Like Eileen, Gwen was also more favourably disposed towards her current social worker because 'she explains things to me' and she had also arranged for Gwen to get out of the house to a weekly activities group.

As we shall see later in this chapter, the 'alleviation of loneliness' is one of the most important kinds of 'help' which these women seek and expect from their social workers and probation officers. It is also worth noting that, while probation officers were expected to use their authority and were not resented for doing so, social workers were only given any credit by the women when they produced specific 'goodies'. They were also more likely than probation officers to be attributed with 'enjoying' doing controlling things, like taking children away from home.

But although the women were fearful that their lawbreaking might lead to their separation from their children and that they therefore needed, at the least, to pay lip-service to reforming themselves, they were also conscious that their status as mothers would influence sentencers in their favour. Hilary Walker has demonstrated that attempts to blackmail sentencers emotionally can backfire disastrously (1985: 68), but Veronica was openly prepared to take that risk:

'They did ask who would look after (my son) if I went down. I said I didn't know - they'd have to have him put away in Care. That wasn't really true - my family wouldn't have let it go that far. But I played on that. You've got to play on something, haven't you?'

(93)

Pauline was far less openly manipulative, but when I asked her why she felt she had been dealt with (by her own account) so sympathetically, she replied:

'Maybe it's the fact that I've got to support two children. Had I been a single girl, perhaps it might have been different. I don't know, but I think that would sway me if I was in their position.'

(61)

Being a mother, then, was the most important feature of these women's

lives and the loss of their children - whether physically, through Care proceedings, or emotionally, through arguments or simply growing up - was the thing they feared most and which most threatened their respect for themselves as women.

b) Wifeliness

In contrast to the importance of children, husbands were generally discussed in far less detail and the marital relationship described in fatalistic terms. By and large, the women appeared to expect their marriages to be unsatisfactory. The exception was Jackie, who remained optimistic about mending her marriage, although her romantic view of married life bore little relation to the reality of her situation, since her husband was in prison for assaulting her (cf. Carlen, 1983: 36):

'I've sorted my problems out and so has he. I just want us to be dead happy together with the baby.'

Two women had found their husbands less than supportive during their court proceedings:

AW: 'Has your husband ever helped with your fines?'

Janet: 'No. When I had the TV licence fine, I had to keep going back to court.'

(72)

AW: 'Did your husband go to court with you?'

Ivy: 'No....I thought that was a bit mean of him, actually....I had to phone because I was getting in a state.'

(115)

Only three of the women (Janet, Maureen and Ann) were actually living with their husbands at the time of the interviews and two spoke of a lack of communication and understanding:

AW: 'Did your husband object at all to your doing Community Service?'

Janet: 'He doesn't know.'

AW: 'Does he know you're on Probation?'

Janet: 'Yes.'

AW: 'Is there any reason why you don't want him to know about CS?'

Janet: 'Well, we don't speak about a lot of things.'

(72)

'People don't realise that men go through a change of life....If I didn't think on those lines, I'd have thought my marriage was breaking up and I'd be divorcing him. He doesn't take a bit of notice of me - I could be a cabbage in that house - and then just coming to me when he wants.'

(Maureen: 105)

Despite a long history of marital disharmony, Maureen was still prepared to excuse her husband's behaviour as 'menopausal', although no such excuses seem to have been allowed for her behaviour.

Eileen also accepted her husband's behaviour - in this case, his violence - as a normal part of marriage, and she was very uncertain about whether she would eventually divorce her third husband, who was in prison at the time:

Eileen: 'We've chopped and changed our minds that much over the past 8 months. We've been apart 12 months - he's been in prison 8 months. At the back of my mind is I know that if he comes home he'll hit me.'

AW: 'Do you think anyone will be able to help you with that when he comes out?'

Eileen: 'No, I'm going to take it. If he comes out and he feels better after hitting me, let him hit me. That's my attitude.'

(53)

The tendency of women to blame themselves when their marriages fail

was also illustrated in Ivy's account. Her husband left her and went to live with her best friend:

'Mainly perhaps it was because of my fault that he left....I can see now that perhaps I wasn't very tolerant of him.'

(Ivy: 113)

Ivy had known about her husband's affair for some time ('he went out with this person three times a week') but felt guilty for criticising him because she also 'had got a friend'. Nevertheless, it seemed that she had worked hard to ensure that her 'extra-marital' friendship did not interfere with her role in the home:

'That was a thing apart - my home and family were first.'

(114)

Her husband, on the other hand, had been prepared - as she saw it - to sacrifice his family for his affair. Her anger towards him was not totally disguised but she had coped with her feelings largely by taking on board all the guilt and blame for the failure of the marriage - and had suffered the consequent loss of self-confidence:

'I used to have lots of confidence, which I don't have now. I rely on my family - I watch the clock until they come. This isn't me. I never knew the meaning of the word "loneliness".'

(114)

Loss of confidence and self-esteem as a wife and mother were further exacerbated by the fear of 'neighbourliness' - the fear of having one's 'criminality' discovered by friends, neighbours and relatives through the dreaded medium of the local paper:

'It was in the papers eight times - I had to cut it out. I got into more trouble because I wouldn't let anyone come to my home. The police kept ringing and telling me to go to the station - I couldn't say no.'

(Fiona)

'I don't want anyone to know what I'm doing because I know it will be in the papers and if Mum finds out it will break her heart.'

(Pauline)

AW: 'Was anything in the papers?'

Ivy: 'I looked and I thought "Good grief, I hope nothing is" - I didn't see anything.'

AW: 'Have you had any comments from neighbours?'

Ivy: 'I never told anyone.'

(114)

AW: 'Was there anything in the local paper about it?'

Janet: 'Yes. I've had lots of comments from neighbours - half of them don't speak to me. I lost my job over it.'

(73)

Sexuality

Perhaps unsurprisingly, most of the women interviewed did not talk about their 'sexuality'. Perceiving criminal activity as an expression of a woman's sexuality is a pastime indulged in more by those who seek to classify, judge and reform women than by those women themselves. As Heidensohn (1985: 93) observes, 'alongside the witch, the whore is the most potent image of female deviance', but, unlike mental illness, it is not an identity which women themselves are ready to accept in order to minimise their punishment.

Carol was quite clear that, whilst shoplifting was an acceptable way to make money, prostitution was not:

'I could be a hustler, but I'm not giving my body away, so I steal. At least I've got some pride.'

(76)

She was also very dismissive of those social workers and probation officers who had implied that her violent cohabitee might be meeting some psycho-sexual need in her:

'People say "Get him out" but you can't just do that. I've been with him seven years - and he's violent. Did you read in the papers about a man raping a woman at knife-point? That was him - and he got off. That's what they call justice - he gets off and I get sent down for shoplifting £39.'

(80-81)

Eileen insisted that accounts of her promiscuity were much exaggerated:

'I got involved with a man in September - and they said I was sleeping around.'

(50)

Jackie was the only woman who admitted that she was a prostitute but she maintained her personal integrity by detaching herself emotionally from her clients and ensuring that she went 'only so far' with them (cf. McLeod, 1982 . Like Carol, 'pride' was an important criterion:

'I've never had intercourse. I only give "hand-shakes" and do kinky things. I wouldn't give them my body or take anyone home. I've got my pride. It's just easy money.'

For Jackie, prostitution was clearly preferable to other employment that might be available to her:

'I've had a couple of jobs, but I've never really needed to work. I've always had "Sugar Daddies". I can get what I want out of men.'

As an inmate of a Special Treatment Unit, Jackie's prostitution had been attributed to psychopathology (cf. Glover, 1969). Her own account suggests that the explanation for her behaviour lay more in the realm of economics than emotions. She was not, however, unaffected by the attitudes of those close to her. Unlike McLeod's prostitutes (1982: 34)

she had not been rejected by her family, nor had she distanced herself from their controls. Like the other women I spoke to, she was not easy to categorise. Her life was full of contradictions and paradoxes, as she struggled to make sense of economic disadvantage and physical and emotional abuse.

Pathology

Of the 15 women, only two had had no involvement with psychiatrists and even these women referred to their own feelings in 'psychiatric' terms, thus indicating the extent of the influence of images of pathology in relation to female lawbreaking. Fiona spoke of the depression she experienced following her offence, the fear of her parents' discovering it by reading the papers and the guilt she felt when her father died whilst the case was being processed. At the other end of the spectrum, the 'professional' shoplifter, Carol, spoke of her stealing activity as being almost a compulsion:

'It's just that I go into a shop and....if the woman goes away and leaves me, I've just got to take something....I just can't be trusted.'

(Carol: 77)

She received little sympathy, however:

AW: 'Sometimes when women get into trouble, people say they must be sick....'

Carol: 'They're never said that to me. My social worker says I just live too high above my means.'

(77)

Amongst the 'already-labelled' women, however, there was a surprising reluctance to accept the 'sick role' (cf. Chesler, 1974; Procek, 1981). Ivy and Maureen had the longest histories of mental illness and both, it might be argued, had taken on a 'sick role' as a response to their powerlessness in the family (Messerschmidt, 1987). Nevertheless, they

both struggled against being defined as 'abnormal':

'I've woken up petrified at about 4.30 in the morning and taken Valium....I get very lonely inside, a feeling of unreality....a feeling of not quite being normal. (But) when I look at it in another respect, I think, "you silly fool, you - you're the same as anyone else".'

(Ivy: 113)

'One day I ran out of tablets and I didn't bother to get any more, and I slept without better - more of a natural sleep. And I went to the doctor and said, "I don't want any more nerve tablets" and she said, "You what? You've had no side effects?" and I said, "No". I haven't taken them from that day to this. I mean, I'm very highly strung. The house - it gets me downbut now I don't let it get me that bad.'

(Maureen: 103)

Pauline had been diagnosed as a depressive and referred to a psycho-therapeutic group, which she enjoyed very much ('I just trot along because I like going!'). Nevertheless, she made a clear distinction between herself and the other members of the group:

Pauline: 'Out of a group of about six of us, three would be depressives with something in common and there's the girl with a phobia, and then there's another girl who gets temper tantrums with her depression and then there's me....I try to understand how they feel but I can't really know what it's like.'

AW: 'Would you describe yourself as having depression?'

Pauline: 'No, I don't think I have depressions. I have times when I'm upset and worried....I feel rotten about everything but that's not the same thing.'

(59)

The three women who had been classified as 'problem drinkers' (Jackie, Ann and Veronica) all denied that their problems were either current or chronic. Jackie claimed to have been 'dry' for twelve weeks but did not envisage having to remain totally abstinent. ('I'm not a real alcoholic'.) She calculated that alcohol was not problematic for her unless combined with Ativan (a tranquilliser), to which she had been - but was no longer -

addicted. Ann's response was almost identical:

'I used to have a drink problem, although it took me a long time to admit it.'

She, also, had been addicted to Ativan but claimed she had not taken any drugs for two weeks. Veronica also claimed that her heavy drinking days were a thing of the past:

AW: 'What about the drink problem you said you had - do you still get that?'

Veronica: 'Well occasionally - but not like I used to. I used to be drinking all the while....Then I just plucked up courage one day and says, "No more drink" - and I went for about 18 months.'

(94)

These comments suggest that these women had learned that whether or not their drinking had actually diminished denial of a drink problem would not prevent intervention by professionals, who regard such denial as a classic defence mechanism of alcoholism. Rather than resist such intervention openly, they had learned to accommodate the powerlessness of their gender/class position (Messerschmidt, 1987: 158) by admitting the problem, but only as a past feature of their lives. By such means they were credited with having some insight into their problems but they also succeeded in neatly side-stepping responsibility for change, if they did not wish to change.

After years of such evasion and passive non-co-operation, such women had succeeded in being defined as having 'personality disorders, not amenable to treatment'. But what had been the women's expectations and experiences of 'treatment'? On the whole, there was a marked disparity between what the women had expected (or wanted) of psychiatry and how they experienced it. It is not insignificant that the woman who had the happiest experiences of 'treatment' (Pauline) was not receiving drug therapy. Psychotherapy - the opportunity to talk about oneself -

was what most of the women expected from psychiatry. Those who could identify that element in their treatment were markedly more satisfied with their deal than those who could not. Jackie and Eileen, both of whom had experienced the 'therapeutic community' atmosphere of a Special Treatment Unit, had found 'treatment' reasonably beneficial. By contrast, those who had experienced ECT, drug therapy or ludicrously brief, curt 'consultations', had found the experiences alienating, confusing and humiliating. The experience of Susan (a non-responder), recounted by her probation officer, is typical of many women on probation with conditions of treatment:

'From her description of what is happening, she is asked if she is all right, is her family all right, is she managing to cope, fine thank you, I'll make another appointment. She goes for two minutes each time and she feels she has no confidence in the psychiatrist....She never knows who it is she's seen, but from what I can gather, it tends to vary a bit.'

(Probation Officer 17 on Susan: 285)

A number of the women actually claimed that they felt worse after ECT and drug therapy than they had done before. Ivy had felt quite disorientated after ECT:

'I would never have electric shock treatment again - it does something to the brain. It's helpful perhaps at the time, but it blocks out great masses of things that have happened. But it doesn't block out the nasty parts - if you understand.'

(112)

'People tend to think that when you come out of hospital that you're quite better, when in fact, that's not always the case - it takes time to adjust yourself. Looking back on it now - well it's horrific. You still get this confused state.'

(110)

Veronica had been prescribed Valium, but she had felt they were 'no good':

'You were losing your days all the while - you didn't know what you was doing with them. You was asleep all the while. That's no good for you. So I just put them down the toilet one day, and I've never had them since.'

(94)

Maureen, as we have seen, also decided to give up her tablets because she became horrified by her dependency on them:

'I sometimes got left without (tablets) and I'd cry and my eyes were red and I'd go down to the doctor and I was ashamed to be in that state. Then he'd give them me and I'd be all right. But it used to give me banging heads.'

(101)

While she had been in prison, she had also experienced the humiliation (cf. Peckham, 1985) of having to queue for her medication:

'In there I was on Valium, Tryptisol, Prochlorol and tablets for me kidneys and me bowels. Three times a day - all that lot - can you imagine? In fact, they called me the 'drug squad' at the blooming clinic. Although I didn't want it, the doctor was giving me this and I felt horrible with girls standing behind me having two things and I was having five things at a time.'

(emphasis added: 103)

Gwen was in hospital for 3 months, receiving Modicate injections which seemed to make her extremely lethargic. She had few visitors and became increasingly fearful of becoming institutionalised:

'When you don't have visitors it makes you worse because you're getting more into the routine of the hospital.'

(86)

The doctor had told her, she said, that the more active she kept, the more likely she would be to be discharged. But, she explained,

'I used to do a lot of sewing and things but I stopped doing it. He said, "If you start doing your sewing and doing things you're more likely to be discharged". But I got so that I couldn't

do it - and I think that was the injections.'

(86)

Eventually, in exasperation, she found the courage to walk out, and when I interviewed her several months later, declared that she felt 'much better' without the injections.

Women like Susan, Ivy, Maureen and Gwen clearly experienced psychiatry more as control and punishment than as 'treatment'. Ann, in fact, said that she preferred prison to hospital. They were also very fearful of the power of their psychiatrists. As working class women, they were doubly muted in their relationships with middle-class, professional men - by class and by gender. Susan's probation officer illustrates the problem:

PO 17: 'I've said, "Why don't you tell him you think it's a waste of time?".'

AW: 'That's a bit much to expect, isn't it?'

PO 17: 'Well, not in those words! But I've suggested what she could say, but she won't, because she'll avoid the problems....'

(emphasis added: 289)

So it is the woman, yet again, who gets blamed!

But the psychiatrist's power - and the women's fear of it - was seen to extend beyond the hospital and the surgery - into a) the court and b) the home. The psychiatrist's expressed willingness to offer 'treatment' was seen as an important pre-requisite for obtaining a lenient (i.e. non-custodial) sentence. As has been seen in the case of Kathy, even a charge of murder can result in a probation order if such an offer is forthcoming (even if it is never honoured) (see also Allen, 1987). Conversely, a report from a psychiatrist declaring a defendant to be 'not mentally ill' or 'not amenable to treatment' is likely to render the defendant more liable to imprisonment than she might have been without a

report at all. Veronica was very pessimistic after the psychiatrist had said he thought she was 'perfectly all right':

Veronica: 'So that's when I thought I'd go down because I didn't have very good reports.'

AW: 'You hoped that he would say you needed treatment?'

Veronica: 'Yes, that's it - but he didn't. He was very nice - but, you know - he wasn't on my side.'

(94)

Two of the women believed that it lay in their psychiatrists' power to remove their children from them - or return their children to them. Eileen's psychiatrist had made a rare domiciliary visit to observe her as a mother, in her 'natural' environment:

Eileen: 'He came to the house just before Christmas - to see the children. He'd seen me in hospital as a patient, but he'd never seen me as a mother.'

AW: 'Do you think he was able to get a good impression of you at home?'

Eileen: 'Well, he's told me to keep my children - he's done a report.'

(49)

Gwen's daughter had already been removed from her and she believed that her psychiatrist would block any attempt by her to get her daughter back:

'I was thinking of going to court, but I suppose Dr. C only has to say he doesn't think I'm fit to have her back, and that would be it.'

(90)

The role of the psychiatrist as a wise man - as 'father, judge and legislator' (Cousins and Hussain, 1984: 137) - will be explored further in Chapter Six of this thesis.

Conclusion

Contract Avoidance: Shifting Signs or Nurturing the Confined Soul?

On the basis of the analyses presented in this chapter it is argued that there exists a 'gender contract' which offers to women who break the law the opportunity to neutralise the implications of their criminal activity and minimise its punishment. The 'contract' requires that female lawbreakers be rendered domesticated, feminine and/or sick and such interpellation is achieved through the technology of muting. In the context of criminal justice, muting occurs when defendants are subjected to a formal justice which encourages self-expression but experience this as a substantive injustice, which denies self-expression. Just as the law applies, in theory, equally to all classes but the working classes are routinely criminalised more frequently than the middle classes (Box, 1983; Messerschmidt, 1987), so similarly, women have the same formal rights to representation and medical examination as men, yet women - and particularly working-class women - are substantively disadvantaged. The reasons for this are that:

- 1 since the world of crime is male-dominated, women entering that world are immediately threatening and likely to be labelled as failed women;

- 2) the court-room is a public and 'masculine' arena where inter-action must be audible, rationalisable and adversarial;

- 3 the personnel most familiar with the workings of the court are predominantly white, middle-class, professional and male.

From their own accounts, it is apparent that the women studied here experienced the criminal justice system as bewildering, degrading and unjust. Yet their attempts to cope with it were characterised by neither total acceptance nor outright rejection of the treatment they received and the descriptions with which they were labelled. Rather,

their attempts were characterised by accommodation - by a mixture of self-blame and suppressed anger, translated into a variety of petty resistances and rituals which might be conceived of as either 'shifting the signs' (Foucault, 1975) of the gender contract with a degree of agency or, alternatively, as 'minor deviations....(which)....nurture the confined soul' (Ardener, 1978: 29). These simple acts, because of the narrowness of the stage on which they are enacted, are of absorbing interest to the characters involved, but exert little influence on those who have the power to write the play.

Three mechanisms were employed by the women studied to 'shift the signs of the 'gender contract':

(1) Elusiveness. By physically failing to keep appointments (and by using legitimate domestic responsibilities and/or sickness as excuses/ reasons the women escaped control by ironising the constraints of femininity. At the same time, they further exploited the contradictions of the 'gender contract' by being grateful. By expressing appreciation for all the help that had been offered and for the sympathetic treatment received, some of the women escaped control by disarming their would-be controllers. Like Pauline, they could say that everyone had been 'wonderful' - and carry on shoplifting'

(2) Making demands. The alternative to avoiding contact and being emotionally elusive by being grateful was to make constant demands and become a 'nuisance' to the system. Pauline's probation officer puts it succinctly:

'If I'm not available she's very hurt and upset.... very angry because (she thinks) I should be there....I've told her she's like a baby - wants a feed, cries and demands it now - and that's not reality.'

But, of course, it is reality for these women, and one way in which they

can struggle to defy description is by demanding the attention of a system (and a society) which claims to care but which, in fact, is dismissive (cf. Carlen, 1983).

It could, however, be argued that these resistances and rituals are merely 'defences of the weak' (Mathiesen, 1972), achieving little that is constructive for women. Certainly they may succeed in confusing others, but may it not be that the price which they pay is that they also confuse themselves? In their efforts to avoid the contract, were they any nearer to identifying what they did want or how they might achieve that? In the midst of this confusion, it appeared that some of the women were able to identify what Maureen termed 'ways round' the contract which also produced more tangible benefits for the women themselves:

(3) The creation of small scale pleasures: Working, Socialising and Helping Yourself. The importance to the women's self-esteem of having some working identity beyond domesticity was clear. Pauline said of her part-time job:

'I don't seem to get the stresses when I'm working, because it's an outlet.'

As will be seen in Chapter Seven, the value of Community Service for Janet and Carol lay in the opportunity it provided to do a job well, outside their own homes, and to receive some appreciation for it. Having a legitimate reason for mixing with other women was also important for some of the women. Gwen found that she benefitted from the weekly needlework classes arranged by her social worker, partly because she enjoyed the opportunity for creativity and partly because 'It gets me out'. Veronica was fortunate in having friendly neighbours:

'I go to the two girls over the road, if I'm depressed or feel like drinking. If I go and have half an hour with them, that helps.'

For Maureen, there was only one solution:

'You've got to face reality.... - you can face reality if you want to. It's how you feel inside - don't let them pull you back. And that is what I've done and, you know, it's been marvellous, it really has been marvellous.'

The attempts of these women to assert themselves and to take some control of their lives were steps which the women had discovered for themselves and they were all the more precious for that. They represented their struggle to resist the constraints of both the ideological and the material conditions of their existence, which converged to confine them within domesticity, sexuality and pathology. By doing contradictory things and exploiting the contradictions of the 'gender contract' these women were rendering themselves 'nondescript' and could be seen as having taken the first steps towards breaking out of such confines. Alternatively, these steps could be seen as small solutions to vast problems because they created more problems than they resolved, both for the women and for those who were charged with rehabilitating them to descriptiveness, (but who were themselves confined within contradictory discourses - see Chapter Two).

It is a central argument of this thesis that the consequence of 'nondescriptiveness' is that women are frequently placed on probation. This is not primarily because probation officers are any more successful in defining these particular female lawbreakers than are any other judicial, medical or welfare personnel, but because the discourse and practice of probation is assumed to be capable of accommodating nondescriptiveness. As David Millard (1982) argues, the Probation Service has traditionally represented 'institutionalised ambivalence' in the criminal justice system. It has positively encouraged courts to be uncertain. Much has happened in the past five years to challenge that view of the probation order but little attention has been paid to

the consequences of that challenge for women like those in this study. The relationship between 'nondescriptiveness' and probation discourse and practice is therefore taken up again in Chapter Seven of this thesis. Before then, Chapters Four, Five and Six examine the ways in which magistrates, solicitors and psychiatrists are themselves confined within the discourses and practices which serve both to mute and to limit these particular female lawbreakers, in their struggle to shift the signs of the 'gender contract'.

CHAPTER FOUR

MAGISTRATES: EXPERTS IN COMMON SENSE

Introduction

In the preceding chapter, the fifteen women on whom this study is based have been introduced. Official accounts of their circumstances and their lawbreaking have been juxtaposed with their own accounts and the discourses within which attempts are made to construct them as 'normal' women have been identified. It has been argued that these discourses of femininity - domesticity, sexuality and pathology - which together constitute the 'gender contract' have, nevertheless, failed to describe these women adequately. Instead, they only succeed in exerting any control over these women by rendering them muted. Within the criminal justice system, these women are muted by being subject to a formal justice which encourages self-expression but which they experience as a substantive injustice which denies self-expression. In the male-dominated world of crime, women are immediately threatening and are likely to be labelled as failed women. The courtroom itself is a public and arguably 'masculine' arena where interaction must be audible, rationalisable and adversarial; the personnel most familiar with its workings are predominantly white, middle-class, professional and male.

This chapter and those which follow (Chapters Four to Seven) examine the 'chain of signification' which results in the muting of nondescript women. Each chapter analyses the utterances of particular courtroom personnel. It identifies the origin of their authority to know and speak about female lawbreakers, the rules governing that speech, the programmes, technologies and strategies which circumscribe their practices, and the consequences of their discourses for the women in this study. It is argued that these personnel are all agents of signification by virtue of their privileged status within the courtroom.

The source of that privilege is:

(a) the law itself, which defines and regulates the rights and capacities of such agents to intervene in (and construct) the field of social relations (episteme) in which subjects move (Hirst, 1980);

(b) the differential class-based capacities of those agents (for example, superior education, speech, dress).

However, just as it has been contended that existing discourses about female crime have vainly sought the 'essence' or 'truth' about female lawbreakers, so there is a need to recognise that the doctrine of 'sovereignty' (see Chapter One) serves to mask incoherence and inconsistency in the practices of what Hirst calls 'differential agencies of decision' (Hirst, 1980: 68). The administration of criminal justice is only one of several processes whereby particular activities arising from particular social relations are defined and regulated in a particular way by particular agencies within the state. It is therefore misleading when the doctrine of sovereignty represents the criminal process as the expression of a sovereign will.

Even in a state with a constitutional monarchy, although sovereignty is symbolised by the monarch, it is purported to reside in 'the people', who are represented in the law-making and law-enforcing institutions of the state (i.e. Parliament, local councils, the courts). As Hirst argues,

'The state can thus be thought of and held to be a unity, as a single, homogenized and hierarchized medium, of a will that emanates from its centre.'

(1980: 69)

But there is within this representation a serious and crucial paradox. In a democratic state, the notion of sovereignty is problematic for it implies absolutism and totalitarianism. It is therefore necessary to characterise sovereignty as 'accommodating difference', as being able to balance differences of interest and opinion in a way that will render it

ideologically acceptable to and recognisable by the majority of the state's subjects. To do this the administration of criminal justice, although defined and regulated by law, must be seen to be to some extent independent of that law. For justice to be seen to be done the law must be seen to be administered by agents who draw their authority from discourses which are 'outside' and therefore beyond the control of the law. These agents are seen to have the capacity to challenge the absolutist tendency of the law. For example, doctors are seen to be able to challenge the law's basic premise that all subjects are equally responsible for their actions or equally fit to receive its punishment; social workers are seen to be able to remind the law of its responsibility towards the welfare and rehabilitation of the subject, as well as his punishment; solicitors are seen to be able to preserve the rights of the subject in the face of the seemingly overwhelming assertion of the rights of the state; and, finally, lay magistrates and jurors are seen to be able to safeguard the interests of the whole community against the abuse of the power of the law by any of the other agencies of decision.

The rights of these agencies to intervene in the administration of criminal justice are frequently represented as being inherent in the notion of 'natural justice'. There is an assumption that there exists an entity called 'the community' which, although it consists of widely differing interests can ultimately accommodate that difference in a natural sovereign consensus, which is reflected in the administration of justice, rather than being constructed by it. But the rights of these agencies to intervene are neither self-evident nor natural. They do not inhere in any general notion of 'citizenship' or 'community'. They are themselves defined and regulated by law. The specialists, the experts (and this includes magistrates, as is demonstrated in this chapter) do not possess any natural right to control, supervise or judge the actions

of others, nor do they have unlimited or unfettered competence (or capacity) to do so. As Hirst argues,

'Law defines the status of the specialist practices and sets limits to the powers of the agents and institutions involved.'

(1980: 92)

Agents are ascribed certain statuses within the courtroom, the concept of 'status' consisting of both rights and capacities. The problematic nature of status in magistrates' courts lies in:

- a) the extent to which experts derive their status from outside the courtroom and
- b) how that status is structured or restructured within the courtroom, i.e. what strands of 'knowledge' are sanctioned and what bits are excluded as inappropriate. For example, it will be argued below that whilst a woman magistrate may be recruited to ensure a 'balance of the sexes', she is prohibited from expressing her 'femaleness' in her practice on the Bench. Similarly, whilst a solicitor may recognise the material aetiology of much crime, the expression of such 'knowledge' is deemed to be 'inappropriate' to his status as a speaker of strictly legal discourse. The probation officer, on the other hand, who is allowed to talk of material deprivation, is deemed not to understand the complexities of legal discourse. Thus it is possible, by fragmenting the ascribed rights and capacities of the experts, to ensure the perpetual reproduction of difference and contradiction in a way which renders the challenge to sovereignty ineffective, whilst simultaneously representing that difference as an essential characteristic of the sovereignty of 'the people'.

What Chapters Four to Seven will elucidate are the mechanisms whereby female lawbreakers are constructed by agents of signification within the known parameters of existing discourse, in ways which ensure that new

knowledge about them can be constantly rejected - not because of the abuse of status by individual experts, but because the legitimate exercise of status overdetermines its rejection. Whilst acknowledging that this process of construction takes place in relation to both men and women lawbreakers, it is argued that these two categories of subjects are constructed differently and that acknowledgement of this difference is itself one aspect of the 'new' knowledge which is constantly rejected. For example, despite at least a decade of interest in the differential treatment of women by the criminal justice system, it remains possible in 1985 for an eminent criminologist to write what will doubtless become a standard text for penology courses, with barely a mention of female lawbreakers. Further, he offers the following justification in his Preface for the omission:

'Some readers may wonder why women are not included as a special category in (this book). If this were a text-book of criminology they would be; the differences between the sexes' law-breaking are an important topic. The law of sentencing, however, makes hardly any distinction between them.... Sentencers are said to be readier to mitigate penalties in the case of women, although even this tendency can be exaggerated, as Farrington and Morris (1983) showed. On the whole, however, it seemed best to make points of this sort in the relevant context, and not in a rather scrappy special chapter.'

(Walker, 1985: vi - emphases added)

Such a statement amounts to an outright dismissal of the relevance of examining even the possibility of differential treatment of men and women. Such a dismissal is achieved by a complex of mechanisms.

First, it is suggested that what is of real interest in relation to women is the aetiology of their law-breaking, rather than the consequences, interpretation and treatment of it.

Second, because the law of sentencing makes few distinctions between the sexes, it is asserted that the practice of sentencing makes none

either. Yet this assertion is supported, according to Walker, by a piece of research (Farrington and Morris, 1983) which has also been interpreted as demonstrating that the insistence on formal equality between the sexes in conditions of material inequality amounts to discrimination.

Third, the author denies that this book is, in any case, the 'relevant context' in which to 'make points of this sort'. (Yet if not here, where?)

Fourth, it is implied that any attempt to examine the issue would inevitably (though why?) be 'rather scrappy'; that is, inferior to the rest of the book which is about 'real' crime and 'real' criminals - in other words, about men.

This chapter begins to expose the groundlessness of Walker's arguments by analysing the utterances of lay magistrates. But it does not take for granted the ascribed status of lay magistrates. Instead, the chapter analyses not only what magistrates say but also the authority which they claim for what they say and the consequences for those about whom they say it. In short, the empirical magistrate is relocated within a theoretical discourse. It is argued that:

Magistrates' discourse in general is constituted by the ideology of common sense and the material conditions of a privileged existence. Additionally, women magistrates are required simultaneously to claim and deny similarity with female lawbreakers.

This reconstruction is made under the following headings:

The Origin of Magistrates' Authority: The Ideology of Amateur Justice.

The Rules Governing Magistrates' Discourse: The Appeal of Common Sense.
Gender-Neutral Justice? Magisterial Common Sense and the Woman Defendant.
Sisters in Law? Women Judging Women.

The Origin of Magistrates' Authority: The Ideology of Amateur Justice

Although the roots of amateur justice go back to the thirteenth century 'keepers of the peace', the judicial aspect of justices' work did not assume the form that we know today until the nineteenth century, with the passing of the Summary Jurisdiction Act of 1848 (Burney, 1979).

Whilst the purpose of this Act was to formalise and regulate the power of magistrates (for example, by establishing rights of public access and the right of the accused to be represented by a lawyer), the experience of summary justice has come to be characterised by the sacrifice of many of the attributes of the ideology of law, legality and a fair trial, in the interests of speed and efficiency. This sacrifice is usually justified on the grounds that magistrates deal only with 'trivial' matters but triviality, like beauty, is in the eye of the beholder, and may ultimately derive less from the nature of the offences and penalties of the magistrates' courts than from the triviality in authoritative eyes of the the defendants (McBarnet, 1981).

Despite the jaundiced view of magistrates' courts as conveyor belts for the guilty pleas which constitute 95% of their caseload, it must be admitted that the appointment of lay magistrates represents an explicit statement about the need to safeguard the interests of 'the community' against the abuse of the power of the law by 'experts', whether those be legal, medical or social work experts. Summary justice, it may be argued, is not simply a quicker cheaper form of 'proper' justice; it has the potential to be a qualitatively different form of justice, based on the assumption that there exists an entity called 'the community' which, although consisting of widely differing interests, can ultimately accommodate that difference in a natural consensus.

What, then, are the characteristics and qualities required of magistrates? In the course of interviewing magistrates, I was shown an

'Interview Guide' for the selection of new magistrates. In this schedule it was suggested that:

'It is necessary to....ensure a good balance of representation on the Bench. For instance, there must be a spread of ages, of both sexes, of socio-economic and employment backgrounds, and even of political persuasion, in addition to geographical coverage, if the Bench is to be representative of a true cross-section of the community.'

The personal qualities sought in a magistrate are those purported to reside in the 'decent honest citizen' - 'stability, a balanced mentality, and common sense' (Burney, 1979: 87).

The ideology of amateur justice therefore requires a minimum of legality and expertise. The safeguard against the naked class justice which might ensue from such an absence is the assumed existence of a quality which crosses all barriers of class, age, race or gender - the quality of common sense.

The Rules Governing Magistrates' Discourse

Common Sense Rules

'I like to think we use our common sense.'

(Magistrate 1 - female)

Lay magistrates are unique amongst courtroom personnel in disclaiming professional expertise (cf. Bankowski et al., 1987). Few of the magistrates I spoke to regretted the very limited nature of their formal training. They had been content to learn the job by 'sitting next to Nellie' and believed that they had at their disposal a resource more valuable than legal, medical or sociological knowledge - the resource of common sense.

Magistrates appeal to common sense in order to account for their actions. In so doing, they make assumptions about 'what everyone knows' to be self-evidently true (Carlen, 1976). They free themselves from any

obligation to justify their actions on other, more 'professional' grounds. By using the term 'common sense', magistrates make their activities 'visibly-rational-and-reportable-for-all-practical-purposes' (Garfinkel, 1968). They are, as ethnomethodological studies have demonstrated, employing a procedural device which allows them to make sense of data which has no inherent meaning or coherence. They are establishing rules for handling such material and for minimising any challenge to their handling of it.

One of the central characteristics of common sense is the assumption of a 'reciprocity of perspectives' (Cicourel, 1968). As representatives of the community, magistrates take it for granted that most 'ordinary' people would have a similar experience of the immediate scene in question if they were to change places with them. Consensus about law and order issues is something which is assumed to exist amongst all decent folk, regardless of their sex, age, class or political allegiance - regardless, in short, of individual difference. Thus represented, common sense becomes the metaphor for those statements which tend to be excluded as invalid by experts and which, when uttered, tend to threaten the authority of experts. It consists of all those crude, unrefined and challenging statements which are unanswerable within expert discourse - like those uttered by the magistrate who told me that she and her colleagues 'take psychiatric reports with a pinch of salt'.

Common sense is an elusive and multi-faceted construct but its unspoken goal is singular - the reproduction of consensus. Common sense is sense which is not only common because it is crude but because it is purported to be held universally to be true and to be universally applicable. It is common sense not only because it is the opposite of nonsense and falsehood, but because it is 'sensed'. It is truth which is not accessible to rational thought or argument. On the contrary, it is

intuitive, instinctive and accessible only to the senses. It has to be experienced. But this logically detracts from its universalisability, for my experience is unique, as is yours. Yet, despite this acknowledged difference, its appeal remains in its claim to be stating that which can be recognised by everyone as describing truthfully their own lived experience and which can always-already be inscribed upon the lived experience of others.

'Common-sense has its own necessity; it exacts its due with the weapon appropriate to it, namely an appeal to the "self-evident" nature of its claims and considerations.'

(Heidegger, 1949 in Burton & Carlen, 1979)

Common sense may thus be portrayed comfortingly as the safeguard of the criminal justice system, the champion of freedom, the check on expert power. In a democratic society, if justice is no longer majestic (Hay, 1975) then at least it is not dictatorial. Its administration appears to have become a very practical project - a matter of face-to-face interaction and negotiation. The meaning of justice is reduced to the individual consciousness of thousands of actors who daily play the courtroom game. Conversely, the abstract concept of Justice is perceived as being no more than the aggregate of these atomistic interactions.

Legal Rules and Gender-Neutral Justice

But the administration of criminal justice is not a game (Carlen, 1976) and the legal and procedural rules governing it are not freely agreed upon by the participants. Certain personnel are given more authority to define than others and certain accounts have more credibility than others. The common sense which magistrates claim to be universally recognisable by all citizens is, rather, a specific discourse sanctioned by law and elevated in practice to the status of 'expertise'. In short, majestic

justice has been replaced by magisterial common sense.

Carlen (1976) has argued that legal rules are portrayed as being homogeneous, unproblematic, external, inevitable, essential and eternal. In other words, they are portrayed as 'holding good' over time, across localities and, more significantly, across the social divisions of class, gender and race. Legal rules are therefore assumed to be gender-neutral and the processing of female lawbreakers - with very few exceptions - viewed as unproblematic. (Admittedly, only women can solicit or commit infanticide, but then only men can commit rape or gross indecency.) Magistrates are not, therefore, encouraged routinely to demonstrate awareness or take account of differential circumstances and experiences arising from the social construction of masculinity or femininity. The following quotation illustrates the way in which magistrates can reconcile notions of formal gender-neutrality with substantive gender-inequality by portraying the latter as an irregular feature of women's lives, rather than as the regular feature which, in reality, it is:

'W men are treated no differently from men, except where there are domestic circumstances.'

(Magistrate 2 - female)

Magisterial Common Sense and the Woman Defendant

Magisterial common sense is characterised by a denial of expertise coupled with a claim to authority for statements which are assumed to reflect public moral consensus. Despite explicitly disclaiming any legal, medical or sociological understanding of crime, magistrates implicitly draw selectively from all these and other perspectives in the construction of their own privileged discourse. It is a discourse within which three key myths may be identified as having important consequences for women defendants:

1. Through the process of self-disqualification magistrates simultaneously deny and claim authority for what they say; the consequence for women defendants is that they are rendered always-already invisible, inaccessible and unknowable (yet forever known).
2. Through the invocation of the ostensibly gender-neutral concept of individual merit magistrates simultaneously generalise and deny the possibility of generalisation; the consequence for women defendants is that they are rendered intractably heterogeneous.
3. Through the privileging of personal life experience magistrates simultaneously claim and deny similarity with defendants; the consequence for women defendants is that they are rendered like-yet-not-like women magistrates.

Self-disqualification and the Invisible Woman Defendant

'I've dealt with very few women.'

(Magistrate 2 - female)

Although women still constitute a small proportion of all defendants appearing in courts, I found only one magistrate who was aware of any increase in their numbers of recent years. On the whole, it still seems to be women defendants' scarcity that characterises their image in the minds of magistrates - they are underrepresented. It is hard to believe, for example, that the following statement by a woman magistrate could possibly be factually accurate:

'I've been a magistrate for ten years and I think I've only had three or four women appearing before me.'

(Magistrate 3 - female)

Other magistrates were less extreme in their estimates but, as Pat Carlen (1983) found in Glasgow, most prefaced their remarks with disclaimers:

'I'm not very helpful on women, I'm afraid.'

(Magistrate 4 with 18 years' experience - female)

'For some unknown, unexplained reason, my personal dealings with female offenders have been extremely limited.'

(Magistrate 5 - male)

Nine out of the twelve magistrates interviewed explicitly disqualified themselves from being competent to speak about women defendants. Those with relatively few years' service felt they lacked experience, whilst those with longer service implied that women defendants were too few to justify generalisation anyway. Thus it was made clear that whatever views might subsequently be expressed by the interviewee, these were based on no more than anecdotal evidence and were emphatically not to be taken as authoritative statements.

So the first manifestation of magisterial common sense in relation to women defendants is an expressed emphasis on self-disqualification, consequent on perceived lack of experience. That lack of experience results from limited time in the job ('I've only been doing this work for five years' , limited access to the material being studied ('I deal mainly with juveniles and domestics'), or the elusiveness of such material ('We don't see many women here'). In other words, women defendants are not recognised by magistrates because they are invisible. Alternatively, it might be argued that women defendants are invisible to magistrates because they are not recognised as being 'real' criminals. Women are 'out of place' in court (Worrall, 1981) and are routinely 'not seen'. Those who do draw attention to themselves as a result of 'unusual' offences, behaviour or personal circumstances are always-already marked out as 'unfeminine'.

Individual Merit and the Intractably Heterogeneous Woman Defendant

'You can't generalise - every case must be treated on its own merit.'

(Magistrate 6 - male)

'In my opinion, it is important to stress that every case brought before a magistrate is different, due to the circumstances and background of the defendant, whether they are male or female. I believe that my judgment is based much more on the individual rather than their sex.'

(Magistrate 7 - female)

'Every case is treated on its own merit - it's such an individual thing.'

(Magistrate 2 - female)

'Every case is treated individually and can never be "generalised"....I would again stress that every case must be treated on its own merit.'

(Magistrate 8 - female)

Since so few are 'seen' by them, it follows that magistrates claim to be wary of generalising about women as a category of defendants. A further contribution to this caution is made by the sentencing principle of individualised justice (Pearson, 1976; Edwards, 1984). The practice of seeking the most suitable sentence for a particular defendant has the effect of depoliticising the personal circumstances of those appearing in court. This effect becomes exaggerated in relation to women, since, as has been seen in Chapters Two and Three, femininity is constructed within the private and personal confines of domesticity, sexuality and pathology. Even when women defendants are 'seen', they are not recognised as sharing, or having in common, any conditions of existence that might explain their lawbreaking activity - they are rendered intractably heterogeneous.

The process of individualisation is ostensibly gender-neutral but serves, in practice, to reinforce gender distinctions. If each case is treated on its own merits - so the argument goes - it is not possible to

generalise on the grounds of age, class, education or any other socio-economic factor, including gender. Yet this is precisely what magistrates do. Despite their denials they do demonstrate a sociological understanding of women's position in society and of the stereotypical role expectations of women as wives and mothers. Some magistrates are conscious of the oppressive nature of such role expectations but they are also conscious of the contradictions between this sociological understanding and the formal gender-blindness of the law. The law does not allow for the social construction of legal subjects. In order to reconcile the contradictions between legal and social construction, the moral concept of merit is invoked. The appeal to merit is one which is seen to supercede these contradictions, for it is an appeal to the discourse of morality - of right and wrong, good and bad. These are truths which are held to be self-evident. Whether a defendant is a man or a woman, it is assumed that the qualities of goodness and badness, the notions of culpability and mitigation, free-will and determination, are also gender-blind. Moral attributes, such as selfishness, callousness, responsibility and consideration, are deemed to be universally recognisable and consensually definable. But the concept of 'merit' is itself socially constructed within the ideologies of what constitutes 'meritorious' conduct and these ideologies are themselves gender-related. What is seen to constitute selfish and irresponsible behaviour in a man differs widely from what is seen to constitute such behaviour in a woman. The differential tolerance of drunkenness in men and women is but one example of this (Otto, 1981).

Magistrates, in common with the rest of us, are faced with the problem of induction - how and when to move from specific to general statements. The problem is exacerbated, however, because they feel expressly discouraged from using theory to bridge that gap or to redefine

the problem as being one of deduction. The construct of 'individual merit' allows generalisations to be made at precisely the same time as the possibility of their being made is denied. It provides the means whereby magistrates can reconcile (or close the gap between) the specificity of their own personal experience and the demands of their role. It enables them to act and speak in ways which are just and equitable - that is, generalisable. Thus the individualised, or intractably heterogeneous, woman defendant is a myth, for, despite their denials, magistrates routinely generalise about the women who appear before them.

Privileging Personal Life Experience and the Feminine Woman Defendant

'I feel sad to see a woman in the dock, but I put it out of my mind.'

(Magistrate 6 - male)

'I do find difficulties in this area. The appearance of a woman in court still upsets me a little....I have to force myself to take an objective view, which I admit would come much more easily when trying a male offender.'

(Magistrate 7 - female)

Closely linked to the construct of 'individual merit' - indeed, it may be seen as the opposite side of the same coin - is the mechanism of 'privileging personal life experience'. Magistrates are encouraged to regard their own life experience as 'privileged' in the sense that they are expected to draw on their own experience to inform their judgments. Thus their own personal life experience is ascribed special status within the courtroom when the personal life experiences of other personnel are considered irrelevant to the task in hand.

Most magistrates were only too aware of the dilemmas posed by this expectation that they were like-yet-not-like the defendants with whom they dealt and they felt under an obligation to 'make sense' of their practices. Some (both male and female) admitted feeling personally distressed by

women defendants but felt obliged to suppress that instinctive response. One magistrate implied that her own personal problems might have resulted in her responding sympathetically to such women but she added, 'I can switch off when I go into court'. The irony of such comments is that, whilst magistrates are exhorted to use their common sense and trust their intuition (conditioned, as it must be, by their life experience), certain responses, nevertheless, have to be excluded, controlled or modified in the search for 'objectivity'. Thus 'objectivity', which in most discourses would be taken of necessity, to include logical, rational argument and to exclude sensation, is somehow accommodated within magisterial common sense, without posing a threat to it. This is possible because what is being spoken of is not, in fact, objectivity but consensus. What magistrates felt the need to suppress were those responses which they perceived to be unacceptable to their colleagues. They were the responses which might detract from or threaten consensus.

The privileging of personal life experience also allows magistrates legitimately to challenge the assessments of those engaged in professional discourses - to act as the Other intruding into the claims of sovereign knowledge, (although, as I have already asserted, this act is a masquerade, for magisterial common sense is itself a discourse). Nevertheless, magistrates are conscious of their power:

'I sit two weeks out of three on Wednesdays - I don't like playing God too often.'

(Magistrate 1 - female)

She was alone in expressing reservations about this aspect of the role, and another magistrate argued that:

'One is very dependent on the information one is given, or is revealed, at the time of trial.'

(Magistrate 8 - female)

thus implying a certain powerlessness. Again, magisterial common sense

allows for the reconciliation of such a contradiction - the simultaneous exercise of power and its denial. It is not therefore surprising that professional discourse - in particular, psychiatric and social work - met with inconsistent responses. Dependence on reports which buttress common sense discourse was acknowledged:

'I do appreciate a good overall report, physical, intellectual, emotional and social. I have found that well written, in depth reports can help tremendously when considering sentence.'

(Magistrate 7 - female)

Psychiatric reports which comfortingly reassure magistrates that 'normal' women do not commit crime, and which conveniently reduce criminal activity to female biology are welcomed:

'I would expect that psychiatric reports would be of great help in sentencing women, due to the points I have mentioned (about strains and tensions of family life). Also, to the health problems which are particularly relevant to being a female. In saying this, however, these reports and Social Inquiry Reports are of great value in both men and women.'

(Magistrate 3 - female)

But the right to view the quality of that information through the filter of magisterial common sense was considered the magistrates' privilege and reports which challenged such a right were likely to be dismissed. The merits or demerits of such information appeared to be assessed according to a) personal knowledge of the author (cf. Carlen, 1976) and b) the extent to which the authority of the utterances could be recognised or, as Edwards puts, the 'correct anticipation of "observers' rules"' (1984: 145). Thus experts may be ignored if they sound either insufficiently or excessively 'expert':

'We take psychiatric reports with a pinch of salt - we have to accept that they are the experts, but some of the things they say are a bit way out - we use our common sense.'

(Magistrate 2 - female)

As June Huntington (1981: 74) says:

'Even when an occupation has a relatively undisputed "authority to know" its claims may still be weak because the public denies any need for that particular area of knowing. This would appear to be the case with psychiatry.'

Probation Officers may be ignored if they appear too sympathetic towards the defendant, and thus fail to meet the requirement for all courtroom personnel to appear to be judicious:

'We find that probation officers sometimes bend over backwards towards a defendant - we don't always follow their recommendations.'

(Magistrate 2 - female)

But personal acquaintance is very important:

'Social Inquiry Reports are excellent from probation officers - and social workers. But social workers don't give verbal evidence well. We get to know probation officers - we need to get to know social workers.'

Psychiatrists - I know AA, and BB is a close friend, so I trust them. But some from X - well, CC always talked about sex - it was ridiculous. I don't know DD, but she made a bad impression on magistrates early on. She seemed drunk - but she couldn't have been, in her position.'

(Magistrate 4 - female)

It is essential that both reports and their authors are, therefore, (re) presented in a recognisable way:

'Some magistrates don't like being told what to do in reports - there are ways of putting things.'

(Magistrate 4)

Telling a magistrate what to do has the appearance of detracting from the dignity or 'majesty' of the law and reducing the process to one of personal conflict. But discovering the rules which will guarantee the authority of the object of professional discourse to this particular readership is a formidable task, for the very ground on which such rules

should be based is constantly shifting. To 'each case on its own merit' might well be added, 'each report received according to taste'. But is the process quite so unpredictable and arbitrary?

The strategy employed by magistrates to accommodate their conflicting responses to women defendants was one of targetting women into two groups - those who it could be agreed merited compassion and those who did not. The binary stereotyping of women defendants is well documented but its strategic value to magistrates has been less well examined. In order to act, despite the contradictions in their practices, magistrates draw on their own life experience to decide whether or not they can define or recognise the conditions which appear to explain or excuse women's criminal activity. The key components in this targetting process are a) the extent of woman's domestic responsibilities, b) the extent to which her appearance, demeanour and life-style accord with sexual 'normality' and c) the extent to which her problems can be pathologised and 'treated'. In short, the woman defendant is constructed within the discourses of DOMESTICITY, SEXUALITY and PATHOLOGY.

a) Domesticity

'Women are treated no differently from men, except where there are domestic circumstances - that's only natural.'

(Magistrate 2 - female)

Two different arguments were propounded for the consideration by magistrates of women's domestic responsibilities, although these were frequently conflated. Firstly, domestic problems were seen to explain or excuse female crime (which, of itself, was assumed to be unnatural). Women might be reduced to breaking the law either directly by insufferable husbands ('Women aren't naturally criminal - it's the men that force them into it'), or indirectly by the pressures of family life:

'A married woman, and especially a mother, is the keystone of the family and is subject to great strains and tensions, particularly if in a "one parent family" situation or when the husband is unemployed. This could push a woman into crime particularly, in my opinion, shoplifting or attempting to obtain benefits to which she would not be entitled.'

(Magistrate 8 - female)

Domestic problems may also lead to alcohol abuse which, in turn, was recognised as an explanation of crime - provided either that treatment was being sought (and the problem could thus be pathologised) or that the shaky hand was still rocking the cradle! (cf. Curlee, 1968 in Otto, 1981).

'A woman stabbed her husband in a pub recently - we were lenient because she was going to have treatment for her alcohol problem.'

(Magistrate 6 - male)

'Alcoholism is increasing in women. We dealt with a woman who was drunk in charge of a child in a pub. I thought - it's better than leaving the baby at home!'

(Magistrate 4 - female)

Secondly, domestic responsibilities were also important in the mitigation of sentence. The effect of a sentence on a woman's family was often considered more important than the effect on the woman herself. Imprisoning women with children was agreed to be a very last resort, primarily because of the consequences for the children:

'Trying and sentencing a mother has its problems for me because I look at her situation, taking into account the effect upon her family.'

(Magistrate 7 - female)

'In cases where women have in their care babies or young children, I feel that magistrates explore every possible sentence other than imprisonment.'

(Magistrate 8 - female)

Despite this, there are some 1600 children with mothers in prison (NACRO, 1986) and that is not, perhaps, surprising when one considers the irony of this remark from one woman magistrate:

'The governor at one women's prison told me once,
"Women should come here for at least six months,
then we can train them to be good mothers and
they're grateful".'

Motherhood, per se, does not protect women from imprisonment and magistrates do not take kindly to women whom they perceive to be 'black-mailing' them with their domestic responsibilities (Walker, 1985). The issue in question is whether or not the defendant is a good mother, that is, conforming to conventional, middle class expectations of appropriate motherhood and wifeliness (Edwards, 1985). Mothers who commit crimes are, almost by definition, bad mothers who need training to be good mothers. Ironically, such training may require their removal from the site of mothering to a site of punishment. In order, on the one hand, to disrupt the sequence of mothering minimally, 'punishment' should be kept to a minimum. On the other hand, to improve the technical quality of mothering, 'training' needs to be extensive. Pat Carlen (1983) discovered that these ironies are not lost on those women who experience them and that their typical response was not one of conspicuous gratitude.

b) Sexuality

'A woman in charge of an office who cooks the books
gets no sympathy from me - I treat her like a man.'

(Magistrate 9 - male)

The corollary of marking positively (Ardener, 1978) women defendants with domestic responsibilities is marking negatively those without them. Within this latter category, two groups appeared to receive little sympathy from magistrates. Young single women who committed offences in company posed a threat to conventional images of femininity and challenged

magistrates' authority:

'They don't give reasons - just shrug their shoulders.'

(Magistrate 2 - female)

Such 'dumb insolence' was not expected from women defendants since it did not accord with stereotypical expectations of women as guilt-ridden and anxious to please. Defiance manifested in dress, posture or speech is typically a masculine attribute and women who displayed such an attitude risked alienating magistrates whose personal life experience did not equip them to 'identify with' such a lack of femininity.

Similarly, older women in positions of authority in their work were unlikely to be viewed as meriting compassion. Like women magistrates, they had entered a public world dominated by men. Whilst their aggressiveness and competitiveness were seen as more legitimate than the defiance of younger defendants, the price they had to pay for breaking the law was that of being treated (by implication more harshly) 'like a man'.

Criminal activity that could not be attributed to domestic responsibility tended to be viewed as an expression of sexuality or, more specifically, a lack of femininity. Certain crimes were identified as 'women's' crimes. Shoplifting, soliciting, Social Security fraud and embezzlement could be recognised as gender role expressive (Edwards 1985). Other crimes were less acceptable:

'I think that perhaps in the past, women did receive more sympathy from courts than men, but with the increasing number of women appearing for various crimes, particularly those usually committed by men, I think their attitude is changing.'

(Magistrate 8 - female)

As Heidensohn (1985: 94) observes, 'offences which have apparently nothing to do with sexuality are - when committed by women - transformed

into expressions of female sexuality or the lack of it'.

c) Pathology

'We ask for reports more often on women - they often have problems of "change of life" or medication.'

(Magistrate 6 - male)

Closely associated with the image of women defendants as 'sexual' is a further assumption that they are 'sick'. As we have seen, magistrates are fairly sceptical about psychiatric diagnoses and, consequently, those I interviewed did not feel they had come across much 'proper' mental illness amongst women defendants. Nevertheless, the ascription of what might be described as 'sub-psychiatric' medical conditions to women defendants was widespread.

It has been argued in Chapters Two and Three that, in the construction of femininity, the 'normal' female body and mind are perceived as being pre-disposed to malfunction. Menstruation, pregnancy, childbirth and the menopause all result in 'hormonal imbalance' - a phrase which connotes that women may themselves be 'imbalanced' during those times. This principle of 'periodicity' (Luckhaus, 1985) implies that there are times when the mood and behaviour of even the 'normal' woman is likely to be so adversely affected by her biology that any subsequent criminal activity may be regarded as at least partially consequent on it and excused by it. The dilemma posed for lay magistrates is that of assessing the eligibility of a woman defendant for inclusion in this 'excused' category. Is this particular woman 'genuinely' unbalanced and disturbed or is she a malingerer? Because of the 'periodic' nature of her alleged disturbance, it is quite possible for any woman to appear 'normal' in court whilst claiming that she was 'abnormal' at the time of her offence. To resolve this socio-legal conundrum, magistrates have to rely on information supplied by 'experts' in medical and social inquiry reports. But

magistrates reserve the right to use their common sense to evaluate the information provided by experts and even when the expert has a relatively undisputed 'authority to know' - as a psychiatrist undoubtedly does - his claims may still be weak because common sense denies any need for that particular area of knowing (Huntington, 1981). Information from general practitioners and probation officers was generally accorded more respect by magistrates than that from psychiatrists:

'Older women give medical reasons, produce a doctor's certificate. We have to take that into account because doctors don't write those lightly.'

(Magistrate 2 - female)

'I think we pay more attention to what the probation officer says than the psychiatrist - they seem to state the obvious.'

(Magistrate 1 - female)

The discourse of pathology reinforces beliefs about the natural contrariness of women and about women being 'at the mercy of their raging hormones' Luckhaus, 1985).

Implications for Sentencing

Although magistrates believed that they tried hard not to send women to prison, they were not enthusiastic advocates of alternative disposals. Domestic responsibilities were seen to preclude most women defendants from doing Community Service and one magistrate expressed a novel variation on that theme:

'Community Service is usually done in someone's spare time - women don't have any!'

(Magistrate 6 - male)

This comment could be seen as reinforcing a view expressed to me by a probation officer responsible for selecting candidates for Community Service, that a woman might be rejected where it was felt that her

husband would object to her being out of the home on a Sunday and thus impose additional domestic pressure on her. Alternatively, it could be seen as reflecting a deeper concern about the justice of requiring society's largest group of unpaid workers to perform even more 'voluntary' work as punishment (Dominelli, 1984). Women's lack of financial competence also embarrassed magistrates (Carlen, 1983) and presented difficulties in the imposition of fines. The absence of an independent income frequently meant that a woman's fine would have to be paid by her husband, although some magistrates felt this to be no bad thing, especially in the case of television licence offences.⁽¹⁾

'In some cases it should be the husbands in court - when it's TV licence or leaving the wife without money.'

(Magistrate 10 - male)

Unsurprisingly, the sentence most favoured by magistrates for women was the probation order, since this offered the least disruption to a woman's domestic situation and enabled her problems to be individualised and pathologised. Probation was invariably advocated on 'welfare' grounds (Eat n, 1985) and little consideration seemed to be given to the implications of such a sentence for a woman's position on the sentencing 'tariff'. Recent attempts by the Probation Service to raise the tariff weighting of probation orders and render them credible as direct alternatives to custody for more serious offenders (Home Office, 1984) were implicitly regarded as irrelevant to women, who were assumed to be characteristically 'one-off' offenders rather than recidivists (Pearson, 1976). The consequence for women who do reoffend, however, may be to escalate their progress up an already truncated tariff⁽²⁾ towards a custodial sentence, regardless of the severity (or lack of severity) of their offences.

Together, the discourses of domesticity, sexuality and pathology

provide a complex of excusing and mitigating explanations of female crime which was accepted fairly uncritically by the male magistrates I interviewed. The women magistrates, however, appeared to experience a much greater degree of ambivalence and discomfort in relation to women defendants and this was recognised by one or two of their more perceptive male colleagues:

'Women offenders are different physically and emotionally - more complex. I don't understand them as well as women magistrates do. But women magistrates are sometimes harder - perhaps they feel that women who offend have let the side down.'

(Magistrate 6 - male)

Sisters in Law? Women Judging Women

Women magistrates are socially constructed within a number of discourses, in such a way that they can claim to be both similar to (for the purposes of special and authoritative understanding) and different from (for the purposes of sentencing) women defendants. They may be located within two definitional sites. Firstly, as women in positions of authority over other women, they may be regarded as 'wise women' (Heidensohn, 1985: 167). Alongside women prison officers, women nurses and women social workers (including women probation officers), they stand between the demands of the patriarchal state and the mass of women on whom those demands are made, translating 'expert knowledge' into 'common sense' for the consumption of the always-already failing women (Hutter and Williams, 1981) (see also Chapters Two and Three). Secondly, as magistrates they are part of the complex machinery of control (Carlen, 1976; Pearson, 1980), which characterises 'amateur justice' (Burney, 1979). The deconstruction of the 'women judging women' complex therefore involves the excavation of a number of layers of social relations. The foundation of the relationship lies deeper than moral outrage consequent on a sense of womanhood betrayed⁽³⁾ and spotlights the interplay of class and gender

issues in the courtroom.

Images of Women Magistrates

'We're told that we're representing the Queen, and
I think some of them feel they need to look like her!'

(Magistrate 11 - female)

'None of us women magistrates wear hats - we're
unique, I think! I won't wear one. I get confused
in a hat. My head gets hot and I get hopeless.'

(Mrs. Christian Annersley, in Blythe (1969) Akenfield, p. 251)

It is not difficult to conjure up a mental picture of a 'typical' woman magistrate (cf. Pearson, 1980). She is white, middle-aged to elderly, middle - or upper-class, the wife of a local dignitary or a retired headmistress. She may or may not have children of her own but she knows how they should be reared. She will invariably have 'done good' and wear a hat! Yet, as Mrs. Annersley's account of her work indicates, this was not a totally accurate picture even twenty years ago. Whilst the women I interviewed could all be described as 'typical' in their age, class and background, they were neither rigid nor ignorant in their opinions and gave the impression of wanting to understand crime and women criminals in particular. They recognised that their personal life experience was privileged, in the socio-economic sense of the word, and that this sometimes restricted the usefulness of 'privileging' that experience in the sense of using it to inform their judgments. They were certainly not incapable of sympathising and identifying with the problems experienced by the women appearing before them but, at the end of the day, they felt obliged to regard women defendants as 'not like us' because the consequences of any alternative interpretation were too painful to contemplate. Those consequences would threaten the all-important notion of consensus to which magisterial common sense is committed. Over-identification by women magistrates with the oppression of women

defendants might oblige women magistrates to challenge the dominance of their male colleagues on the Bench. So whilst a woman magistrate may be recruited to ensure a 'balance of the sexes', she is prohibited by the imperative of consensus from fully expressing her 'femaleness' in her practice on the Bench. The 'knowledge' about women defendants which she is authorised to have by reason of her own status as a woman magistrate is rendered inferior and inappropriate by reason of her subordination to male magistrates. If 'real' criminals are men, then 'real' magistrates are also men, and the women who invade the public space of the courtroom in positions of power and authority are expected to emulate the qualities of reason, 'objectivity' - and sexism - demonstrated by their male colleagues.

What then are the conditions which determine relationships which women magistrates have a) with their male colleagues and b) with women defendants?

Achieving Consensus and the Simultaneous Recognition and Denial of Difference

'We think of ourselves as a nice team.'

Mrs. Christian Annersley)

Lay magistrates are selected both for their differences and for their ability to 'get on' with each other. They are, in theory at least, expected to demonstrate that they are:

'moderate, fair and conscientious: decent people
picked for their ability to get on with other
decent people.'

(Burney, 1979: 212)

Yet, precisely because magistrates are encouraged to rely on their own experiences and senses, the scope for conflict between them would, at first sight, appear to be considerable. An outsider might question the extent of material and ideological difference existing between magistrates

(Hood, 1962; Baldwin & Bottomley, 1978) but there is a high level of 'felt' or perceived difference amongst magistrates themselves.

'We get a wide spread of occupations on our Bench.'

(Magistrate 1 - female)

Yet though this view was endorsed by most magistrates I interviewed they all put emphasis upon the relative ease with which consensus was achieved, despite these differences. Difference was recognised but only to be cast aside!

'I venture to suggest that this is one of the strengths of the Bench - that it is comprised of men and women of different opinions who eventually make a unanimous decision.'

(Magistrate 12 - female)

'We usually all agree. I've not been in a situation of real conflict.'

(Magistrate 8 - female)

The point here is that, whilst magistrates normally sit in threes - a system designed to accommodate the expression of differing opinions - they routinely experience the system as one of agreement or consensus. This is particularly significant for women magistrates who feel prohibited from even expressing certain of their instinctive responses because they may be 'too personal' and 'too individualised' to be acceptable to their male colleagues. Such inhibition led one woman magistrate to protest (too loudly? :

'We have a wonderful relationship on our Bench - we don't mind whom we sit with. There's no difference between men and women on the Bench - the women can be just as fierce.'

(Magistrate 2 - emphasis added)

Thus women magistrates who can sublimate or deny their womanhood are celebrated, for magisterial common sense, the guardian of public morality can thus claim to be gender-neutral in practice and in law. But

gender-neutrality is a myth and the imperative of consensus ultimately robs magisterial common sense of the power that might result from genuine gender conflicts. The guardians of public morality are either men, or those women who will accept a male-defined consensus. The only personal life experience which is, in reality, given special status or authority in the courtroom is that of male magistrates. It is not then surprising that women magistrates exercise caution in their judgments of women defendants.

Women Defendants: Like-us-yet-not-like-us

Whilst the male magistrates I interviewed were relatively content to attribute female crime to domestic strains and responsibilities⁽⁴⁾, the women magistrates tended to expect women either to accept their lot and make the best of it, or to be more 'rational' and discriminating in the remedies they sought. There was no lack of understanding of the difficulties:

'I was on a baby-battering case. With all my children, I know what a strain it must be without a supportive husband....'

(Magistrate 4 - female)

but these were not accepted as excusing conditions. Another woman magistrate echoed the sentiment:

'I can understand a young mother without a supportive husband getting desperate - but not hitting little babies. Why don't they take it out on their husbands?'

(Magistrate 3)

Why indeed? One may well ask. The dilemma for these magistrates was that their own experiences, on which they were relying, did not equip them fully to understand the woman defendant because common sense does not allow for different material circumstances. Yet they felt unable to

go beyond that experience to recognise the validity of generalisable statements about power relations within the family. Magisterial common sense requires that the unspoken common condition of this contradiction (namely, power relations) be excluded, or at least only partially expressed. Thus, in the last instance quoted the magistrate recognises the power relation between mother and child while refusing to acknowledge the effectivity of that between husband and wife.

Even more ambivalence was expressed by women magistrates about the attribution of the criminal activity of women to their biology. In this, they were not expressing concern about the dangers for all women of the 'medicalisation' of women's behaviour, nor were they arguing that such reductionism

'impugns the integrity of the female actor, stripping her action of cultural and political meaning and anaesthetising the social and economic origin and conditions in which that action takes place.'

(Luckhaus, 1985)

Rather, such conditions were excluded because the magistrates had not - or claimed to have not - experienced such conditions for themselves:

'Menopause is used frequently as a defence - I'm not very sympathetic. I tell my male colleagues, I'll let them know what really happens when it happens to me....Pre-menstrual tension - my girls don't seem to suffer....'

(Magistrate 4 - emphases added)

'As a woman and mother of three grown-up daughters, I believe that women have to recognise and accept any variations in their behaviour due to the menstrual cycle, and not use this as an excuse.'

(Magistrate 12)

The ability of women defendants to touch very primitive emotions of sadness and sympathy in women magistrates is a taboo subject. It is not something to be shared and examined, but to be hidden away and denied

because it is too threatening to the dominant ideologies about crime, justice and masculinity.

Discussion about women defendants was thus foreclosed by women magistrates with the symbolic phrase, 'I can understand but....' The shared condition of female experience was recognised but such a recognition represented the challenge of the Other - the disruptive intrusion of an alternative, non-legitimated mode of lived experience. Such a challenge must be confronted and controlled. So the moment of recognition passes and the space for negotiation opened up by the challenge is re-closed.

The women magistrates I spoke to were not the female equivalents of 'Disgusted, Tonbridge Wells'. They were women who felt confused about the extent to which they could claim to understand other women. They were women who often did understand, but who did not trust their own understanding. They seemed to feel acutely that they were living in a man's world and that they must locate themselves in a symbolic universe of meanings that were empirically grounded in male, rather than female experience.

Conclusion

This chapter has attempted to demonstrate that the relationship between magistrates and defendants is constructed within a discourse of common sense which, despite its inherent paradoxes and discontinuities, is represented as a consistent and coherent unity. Although magisterial common sense may appear to challenge and transgress 'expert' discourse, it is in fact a competing discourse of 'expertise'. In relation to women defendants, it is characterised by a three-fold myth:

1. That magistrates are disqualified from knowing anything about women defendants because knowledge accrues through experience and, since women defendants are always-already invisible, they are inaccessible to the

known and therefore unknowable (yet forever known).

2. That magistrates can never generalise about women defendants qua women, because the law is blind to differences of gender (as of class, age, race etc.); they treat every case 'on its merit' and see women defendants as intractably heterogeneous.

3. That magistrates can always reach a consensus about women defendants both because of, and despite the social, economic, political or, specifically, gender differences of their personal life experiences, these differences being hailed (at the point of recruitment to the Bench) and denied (at the point of judgment) in the interests of justice.

These judicial myths have been challenged and it has been argued that:

1. All magistrates act 'as though' they have knowledge of women defendants, that knowledge emanating from cultural stereotypes of appropriate female behaviour and being reinforced by their own socially and discursively privileged personal life experience.
2. All magistrates invoke the ostensibly gender-neutral moral concept of merit to justify treating women defendants qua women differently from male defendants, since meritorious conduct in men and women is differentially defined.
3. Women magistrates suppress their empathetic understanding of women's position in society because, having entered the masculine world of the criminal justice system by virtue of their womanhood, their ability to sustain their authority and credibility within it is dependent on their denial of that womanhood. The judging of women by women magistrates is seen to be doubly authoritative because women magistrates can root their claim to an authoritative understanding of female lawbreakers in the paradoxical claim that (with female lawbreakers) they themselves share a biological experience common to all women without using it as an excuse to break the law.

Nevertheless, the analyses of this chapter suggest that a greater understanding of women defendants by the magistracy might be achieved if women magistrates felt more confident - and were allowed - to express their genuinely differing perspectives and opinions. The structure for such a richness and variety of contribution exists; what is lacking is the will to experience the discomfort of conflict, especially when the mechanism for achieving an apparent consensus - the appeal to and of common sense - is so readily available. Women magistrates, like women defendants, are socially constructed within the discourses of domesticity, sexuality and pathology. The evidence of this chapter suggests that though women magistrates and women defendants may indeed be 'sisters in law', subject to a common gender oppression, they are not yet able to fully recognise each other because of:

- a) their class differences and
- b) the judicial ideology that claims that law is both class and gender neutral.

The judicial method for handling some of the inequalities outlined in this chapter is the mechanism of legal representation and Chapter Five will examine the assertion of one (male) magistrate that:

'It's easier when women are represented - or have husbands with them.'

(Magistrate 10)

The chapter takes as its starting point the assumption that legal representation is in the interests of all defendants because solicitors are more likely to anticipate correctly the rules governing magistrates' perceptions of understandable behaviour than are the defendants themselves. Solicitors' explanations of conduct are assumed to be 'legally effective rather than merely socially exculpatory' (Edwards, 1984: 145). In Chapter Five that assumption will be challenged. It will be argued that:

1. in order to be 'legally effective' in relation to female lawbreakers, solicitors need to make life 'easier' for magistrates and
2. this necessitates the utterance of explanations and mitigations which are seen to be 'socially exculpatory' in the sense that they reinforce existing stereotypes of female behaviour rather than educating magistrates to a greater understanding of female lawbreaking activity.

CHAPTER FIVE

SOLICITORS: EXPERTS IN RE-PRESENTATION

Introduction

In the preceding chapter it has been argued that female lawbreakers are confined, targetted and programmed by the discourse of magisterial common sense which is employed by lay (i.e. apparently non-expert) magistrates in the courtroom. This discourse is one link in the chain of the socio-legal signification of female lawbreakers and its chief characteristic is the simultaneous recognition and denial of the 'authority of the personal'. The appeal of and to magisterial common sense enables magistrates, and in particular female magistrates, to describe female lawbreakers as simultaneously 'like us' and 'not like us', as different yet not different. The elevation of magistrates' own personal experience to a privileged status allows them to generalise from that experience whilst claiming to treat each case 'on its own merit'. It allows them to distinguish between 'explanation' and 'excuse' by reference to the tacit rules and conventions governing their own everyday activity, on the assumption that such rules self-evidently pertain to everyone. Included within those rules is a very strong sense of 'knowledge' about the appropriate physical, emotional and social state of the 'normal' woman who is, by definition, a non-criminal woman. It was argued that the ostensibly non-expert status of magistrates, which is presumed to be the moral safeguard of the whole system of 'magistrates' justice' is in effect a masquerade. That magistrates develop their own 'expertise' in public morality affords little comfort to those women who have failed in their socially prescribed role as the chief guardians of private morality.

One of the conclusions drawn from interviews with magistrates was that their lack of professional 'expertise' left them feeling personally

uneasy about the 'presentation' of female lawbreakers. The inconsistencies and contradictions in women's accounts and circumstances were uncomfortable, embarrassing and distressing for magistrates. They therefore looked to psychiatrists and probation officers to ease their discomfort but were sceptical of what they heard, fearing that they might be deceived as much by the experts as by the criminals. No such scepticism was expressed in relation to solicitors. The intervention of solicitors was invariably welcomed, since it was seen to emanate from a profession serving a neutral law and therefore to be of benefit to both magistrate and defendant.

This chapter, therefore, identifies the specific ways in which solicitors intervene to represent (or re-present) female lawbreakers. It does so by analysing information from eight solicitors (six of whom were interviewed and two of whom sent written responses to the letter in Appendix II). It is argued that:

Solicitors' discourse is constituted by the ideology of legal representation which requires solicitors to repackage female lawbreakers according to typifications of 'normal' women which can be discursively recognised by 'magisterial common sense'.

The rest of the chapter is organised as follows:

The Origin of Solicitors' Authority.

The Rules Governing Solicitors' Authority.

Gender-Neutral Representation? The Ideological and Material Pre-conditions for the Construction of (Wo)men's Rea.

Solicitors' Competence: 'Women Offenders are Needy, Greedy or Sick'.

Solicitors' Performance: The Staging of Women's Re-presentation within the Discourses of Domesticity, Sexuality and Pathology.

The Origin of Solicitors' Authority

Under the Legal Aid Act 1974 s.29(1), legal representation is made available to anyone involved in criminal proceedings 'where it appears to the court desirable to do so in the interests of justice', and if it appears that the defendant is unable to meet the full cost of such representation. The decision to grant Legal Aid rests with the court and there is a wide variation across the country in the proportion of applications that are refused (Levenson reported in New Society, February 1982, p. 232). However, the granting of Legal Aid does not necessarily mean that legal representation is free. At the end of a case, magistrates have the power to order defendants to make a contribution towards their legal representation, taking their means into account (Legal Aid Act, 1982 s.7). There remains, therefore, an uncertainty about the material 'price of representation' and that uncertainty is sufficient to deter those who may be unsure of the value of such representation. This element of deterrence is, of course, institutionalised in the Legal Aid proceedings, on the assumption that anything which is available free of charge is open to abuse. In practice, as with the provision of all state financial assistance, it is often those most in need and least likely to abuse the system who are deterred. In an attempt to demystify the process of legal advice and to help defendants evaluate their need for representation in a more informed way, 'duty solicitor' schemes have been established in recent years. The objective of such schemes is to provide quick and easy access by defendants to a solicitor free of charge, in the hope that a little advice prior to a court hearing may both ease defendants' anxiety and clarify their need for further involvement by the profession. The scheme also helps to speed up court proceedings and reduce even further the time available for defendants to 'put their case' directly to the magistrates. Thus the provision of a 'duty solicitor'

(and the provision of 'duty probation officers'), has contradictory consequences. By making solicitors' discourse more accessible to defendants one is simultaneously providing a genuine service and reinforcing the necessity for that service. Consultation with a lawyer about the most effective packaging of oneself in court (or is it merely about the packaging that will ensure the most efficient running of the court's business?) is no longer a desirable option but an obligation, departure from which requires justification.

Legal representation in the magistrates' court, therefore, is not typically a process of defending accused people against their accusers since, even with representation, at least 75% of defendants appear to plead guilty (Bottoms and McClean 1976: 105). It is rather a process of defending the court against the unacceptability of the layperson's common sense, which is perceived to be 'out of place, out of time, out of mind and out of order' (Carlen, 1976: 104) and consequently a dangerous intrusion in the proceedings. Representation is, therefore, a strategy whereby the non-legitimated account (the Other) of the defendant is confronted, controlled and rendered 'normal'. The 'common sense' of the defendant's account does not accord with magisterial common sense because the latter has been elevated to the status of 'expertise', whereas the former remains unrecognisable within the courtroom. The use of identical vocabulary masks the significant difference of the 'like-us-yet-not-like-us' paradox which indefatigably confronts the magistracy. The role of the solicitor is to occupy that gap between the defendant's account and the magistrates' recognition of that account. The solicitor's task is to negotiate the precise route whereby that gap is closed. It is a task which requires both authority and skill. Solicitors' discourse claims its authority from the precision of the language of statute but, 'the general principles of English law are not to be found in the statute book'

(Burton & Carlen, 1979: 56). The dominant mode of legal reasoning in English courts is that of a 'common law approach', ostensibly characterised by the rigid principle of 'stare decisis' - the binding authority of precedent. Nevertheless, the law in practice (as manifested in solicitors' discourse) is paradoxically flexible. If legal reasoning were as rigid as the doctrine of precedent suggests, there would be no need for the eloquence and rhetoric of lawyers, for 'the facts would speak for themselves'. Consistency and continuity would be the overriding objectives. In reality, 'it is often difficult to be sure just which features of a case were the decisive ones' (Pitkin, 1972 quoted in Burton and Carlen, 1979). Legal reasoning more commonly seems to be characterised by inconsistency and discontinuity. Some writers have argued from an interactionist perspective (e.g. Bottoms and McClean, 1976), that solicitors have the power to either clarify or fog the law (cf. Dickens, 'Bleak House') and thus contribute to, or prevent, the negotiation of an ultimately attainable justice, which accords with a form pre-existing in nature (viz. natural justice). Others (e.g. Carlen, 1976; McBarnet, 1981) have argued that 'justice' is no more and no less than the name we give to that which is (re)produced by the law, within the institutions of the law. The power of the solicitor does not lie in some machiavellian skill to distort the 'truth'. Nor does it lie simply in the symbolic interaction between individual solicitor, individual lawbreaker and individual magistrate. The power of the solicitor is institutionalised in the paradox of the common-law approach for s/he theorises at the interstices of legal rigidity and judicial flexibility. If judges and magistrates see themselves as 'mediat(ing) justice via a legality of which they are the evolutionary embodiment' (Burton & Carlen, 1979: 55), then solicitors see their own articulation of legal reasoning as an essential contribution to that process of evolution.

The Rules Governing Solicitors' Discourse

Solicitors' discourse is a self-conscious, spoken discourse - an oral intervention. The unspoken goal (Desire) of this discourse is the 'normalisation' of the defendant through a process which packages and re-presents (renders programmable) the defendant as a coherent unity which is recognisable by the magistracy. Normalisation is the process whereby an illegal action, and the person who commits that action are re-presented as 'typical' (Sudnow, 1965). The circumstances surrounding the action, the characteristics and motives of its perpetrator, the consequences for the victim, all have to be located within categories that are already known and recognised. Normalisation, then, consists of particular practices of inclusion and exclusion, and the skilled task of the solicitor involves anticipating and controlling the variety of possible consequences of these practices. Tacit rules govern these practices but, whilst these rules are understood by solicitors and magistrates they are rarely explained to the defendant. These tacit rules (resembling Gordon's 'practices of exclusion' (1977: 15)) are as follows:

1. The defendant is disqualified as a speaker - his/her account is rendered mute (Ardener, 1978).

2. Certain topics are prohibited or redefined. More specifically,

- a) 'Poverty' is a prohibited topic because it is a social, rather than a legal category. The law does not recognise wealth or its lack as in itself relevant explanation of crime. Magistrates respond to mitigations of poverty with comments such as, 'No-one is poor nowadays' or, alternatively, 'Many people are poor but they don't all turn to crime'.

- b) 'Need' is the permitted redefinition of poverty because it implies both relativity (and is thus open to personal interpretation and judgment) and individual inadequacy ('need' is a subjective experience, whereas 'poverty' implies a measure of objective assessment).

3. Certain statements are rejected as illegitimate. More specifically,

a) Explanations of 'sickness' cannot be employed if an offence is either serious and 'unnatural' or petty and 'natural' ('typical', 'normal');

b) Explanations of 'need' cannot be employed where the effect of such an explanation would be to attribute blame to the magistrates, as representatives of the community, or to imply that the alleviation of that 'need' lies within their (or the community's) power.

Although this process of normalisation may be directed primarily towards the protection of the court, it is also perceived as a process which protects defendants from themselves and their own natural inclinations to bargain for their liberty - even by admitting guilt. As Heberling (1978) observes,

'Uppermost in the mind of the defendant is the urge to freedom, the desire to extricate himself from this uncomfortable situation.'

Compelled by this 'instinct', few defendants consider the long-term consequences of admissions of guilt and the role of the solicitor as protector is acknowledged, although the practice of 'plea-bargaining' (that is, informally securing promises of sentencing discounts for defendants who originally wanted to plead 'not guilty') has raised fundamental questions about the nature and justification for legal representation (Bottoms & McClean, 1976; Baldwin & McConville, 1977).

Nevertheless, all these practices are justified ultimately on the grounds that defendants have chosen to engage the services of a solicitor. Contracts have been entered into freely via the fiction of 'giving instructions' and defendants are presented as remaining the knowing subjects/authors of their own discourses. In reality, they have become the objects of another discourse. They have given permission for their statements to be rendered iterable and subject to the kinds of rules I have outlined. They have lost control of their readings, whilst

retaining a faith in the myth of remaining in control.

Solicitors do not talk about making assessments (as, for example, do social workers, probation officers and doctors) - they talk about 'taking instructions'. The implication is that they, as servants, articulate with confidence and competence in public that which the defendant has said nervously and haltingly in private. But what in fact happens is that a privileged discourse is constructed from the broken utterances of the powerless. Discontinuity is rendered continuous, contradiction rendered coherent and fragmentation rendered unified. A grid is placed over the circumstances and emotions of the defendant and a recognisable reading obtained. In short, an assessment is made.

Having thus assessed the defendant, the solicitor is then required to assess the magistrates whom s/he is addressing. The tacit injunction which governs solicitors' discursive performance (i.e. the way in which the above rules are employed) was described to me thus by one solicitor:

'You get to know your bench - you play to the audience.'

'Getting to know your bench' involves speculation about the way in which defendants are perceived by magistrates. It involves taking account of magisterial common sense; it also involves taking account of those factors which magistrates themselves deny are influencing them, but which solicitors recognise all too well as being influential. Those factors - commonly referred to as 'extra-legal' - include class, race, age, wealth and political allegiance.

Gender-Neutral Representation? The Ideological and Material Pre-Conditions for the Construction of (Wo)mens' Rea

So far, this chapter has discussed the origins of solicitors' power and has identified the general rules which govern its manifestation. The arguments presented apply equally to male and female defendants and do not in themselves constitute evidence of discrimination against female

lawbreakers. The strategy of representation targets and programmes both men and women, but it does so in different ways, within different discourses. This chapter analyses the utterances of solicitors in relation to female lawbreakers and argues that, despite using the paradigm of service (e.g. taking instructions), solicitors' discourse renders female lawbreakers muted. The rules and definitions available to solicitors require them to construct women in legal discourse in terms of their exclusion from 'male' categories of behaviour and motivation. By her location within the discourses of domesticity, sexuality and pathology, the female lawbreaker can be understood or re-presented as a 'non-male' lawbreaker - as someone who fails to fit into or falls short of accepted, 'normal' explanations of (male) criminal behaviour. As Frances Heidensohn observes (1985), 'they are not so much....in no-man's land as in too-much-man's land'.

The construction of female lawbreakers within the discourses of domesticity, sexuality and pathology by judicial, medical and welfare personnel is a unifying theme of this thesis, but one of the unique contributions of solicitors to this construction is their authorisation, within legal and judicial discourse, to recognise the guilty mind. The term 'recognise' is not used here to imply any positivistic imperative to search out 'the truth'. On the contrary, the ideology of legal representation releases the solicitor from any such moral obligation. The relationship between solicitors and their clients (whether male or female) is determined by the legal condition that solicitors must suspend any inclination to disbelieve what their clients say. Legal representation is constructed as being morally neutral; lawyers are engaged for their technical expertise - for their knowledge of the law and their ability to articulate the application of its principles to a particular case. Their desire to obtain a favourable outcome for their clients stems from

professional disinterestedness and not from any personal commitment to, or even belief in, the client's reading of events. 'Recognition' here refers to the process whereby solicitors construct a coherent unity (viz. *mens rea*) out of the contradictions that surface from efforts to address the Other of legal discourse, namely, the organisation of the difference that constitutes the 'guilt/innocence' distinction.

The distinctive nature of the organisation of that difference in relation to women is that women are both ideologically and materially pre-conditioned to accept the description of 'guilty'. Ideologically, many women experience a generalised sense of (moral) guilt consequent on their perception of themselves as failed wives and mothers, a perception which (see Chapters Two and Three) emanates from discourses which construct women as always-already lacking (that is, as being NOT MEN). This all-pervading sense of guilt predisposes some women to accept readily that certain of their specific actions can/should be described as 'guilty' acts which, by implication, require punishment. Pauline provided an example of such reasoning:

'I expected a lot worse and, quite honestly, I felt I deserved a lot worse - I still do. I've said this to Dr. C many times - I still feel that I haven't been punished. At the back of my mind I feel, "I've got off very lightly".'

(54)

The ideological conditions which predispose some women towards an admission of legal guilt are reinforced by the material conditions surrounding their appearance in court. A decision to plead guilty may be influenced by any or all of the following material considerations:

- 1) Inability to resist police questioning (Dell, 1971).
- 2) Likelihood of being remanded in custody if a 'not guilty plea is entered (Home Office, 1983; NACRO, 1983) and the consequences for any children.

3) Likelihood of being a 'first offender' and therefore ignorant of procedures and rights.

4) The particular difficulty of prostitutes proving their innocence where it is only their word against that of the police (McLeod, 1982).

5) The sheer lack of 'guts to stand up in court and put her case' (Dell, 1978: 107).

6) The desire to 'get it over with' in order to avoid the feared stigma of publicity which might damage relationships with family and neighbours.

Thus, immediate concerns about the delays and adjournments which inevitably result from entering pleas of 'not guilty' may outweigh any consideration of possible future discrimination consequent on acquiring a criminal record. Suzanne Dell (1971) argued that access to legal representation appeared to reduce the tendency to plead inconsistently (that is, to plead guilty when one believes oneself to be innocent). The evidence from my interviews with solicitors did not support this optimism. On the contrary, most of the male solicitors seemed more ready to agree with Pollak that, women's criminality was more likely to be masked by their innate deviousness than to be unjustly or inappropriately attributed to them:

'It's sometimes difficult to convince women that they are in the wrong. They say "I forgot" and sometimes plead "not guilty", but they're always found "guilty".'

(Solicitor 1)

'I have the impression that quite a high proportion of the embezzlement type of offence (cooking the books) is committed by women and it is exceptionally hard to convince them that they are in fact guilty.'

(Solicitor 2)

'I doubt if there are many "first offender" shop-lifters - only "first time caught".'

(Solicitor 3)

Implicit in these remarks is the assumption, outlined above, that the 'normal' woman pleads guilty because she feels guilty (and it is unnecessary to clarify whether that sense of guilt is general to being a woman or specific to the behaviour in question). It may also be related to the irrational assumption that because most normal women do not appear in court on criminal charges those who do must be real criminals - that is, they must have committed not only this crime but several more before. Consequently, the woman who denies guilt is abnormal. Ironically, however, the woman who appears too ready to admit guilt - and lacks the more general sense of moral guilt - is also deemed abnormal:

'female crime is less hidden nowadays - women are less ashamed to admit to it - they are more liberated.'

(Solicitor 3)

Given this apparent presumption of guilt, it is not perhaps surprising that some of the women in this study were sceptical of the value of representation. As was seen in Chapter Three, Carol was unhappy about her solicitor's reluctance to defend her (as opposed to mitigating for her) and Ivy preferred to try and defend herself. Maureen blamed herself for being unable to give her solicitor enough evidence for a defence. Underlying these accounts was a common concern amongst the women that they were unable to communicate what they really wanted to say in a way that would be listened to, heard and recognised by their (predominantly male) solicitors. The prospect of attempting to justify one's actions (indeed, one's existence) to a man whose education and background may be such as to place him well beyond the class of person with whom she would normally have any social dealings whatsoever, let alone of any intimate nature, may be simply too daunting to contemplate.

Finally, and more prosaically, women may be discouraged from engaging a solicitor because of the expense. The cost of legal representation may

appear prohibitive to a woman who, though without income herself, may be married to a man whose income excludes him from receiving free Legal Aid. It may be a particularly daunting prospect if such cost is likely to fall on a husband whose response to her predicament is not conspicuously supportive (see Chapter Three).

Solicitors' Competence: 'Women Offenders are Needy, Greedy or Sick'

Just as magistrates tended to disqualify themselves as competent speakers about female lawbreakers on the grounds that such women are 'invisible' by reason of their numerical insignificance and that magistrates are therefore inevitably 'inexperienced' in dealing with them, so a number of solicitors initially minimised the difference in courts' (and, by implication, their own) treatment of male and female lawbreakers.

'I would say there is no difference between the sexes so far as verdict is concerned. I cannot think that there is any other difference in this connection and, for example, I do not feel that a woman would be fined either more or less heavily. The difference is only noticeable over the question of deprivation of liberty.'

(Solicitor 4)

'From a prosecution point of view I cannot see that there are any particular problems associated with prosecuting women. From a defence point of view I think that the only problem which does arise occasionally is in connection with the "menopausal shoplifter" who may find giving instructions to a male solicitor embarrassing.'

(Solicitor 5)

'I find no difference between men and women in taking instructions except where "sensitive" mitigation is involved - for example, menopause or pregnancy.'

(Solicitor 1)

On further enquiry, however, it became apparent that the process of 'normalising' female lawbreakers involved solicitors in defining or describing them as being located within a restricted number of gender-

specific categories in relation to a) the nature of their offences,
b) their motivational explanations and c) their appropriate treatment.

The nature of their offences

The normalisation process begins with the recognition of the offence and there is evidence that solicitors see female lawbreakers primarily as shoplifters and, to a lesser extent, as fraudsters.

'So many of the shoplifting cases involve women and follow the same pattern (middle aged, on nerve tablets, mind on other things, no previous convictions). One is left with the feeling that although most are quite properly convicted of theft it is somehow a "different" offence. They would never remotely consider any other form of dishonesty - and yet steal from a shop.'

(Solicitor 2 - written response)

'You quite regularly come across them in shoplifting cases because women don't commit that many other kinds of crime - you don't get many women burglars or many who are involved in violence - it's mainly theft, quite a lot of social security frauds.'

(Solicitor 6: 1)

Such observations would seem to be confirmed by the official criminal statistics (Box, 1983: 166). Shoplifting is the only offence which is apparently committed by equal numbers of men and women but the explanation for this is by no means self-evident. The presence of women in shops and, to a lesser extent, social security offices, is far more 'congruous' than at the scene of burglaries or public brawls (Worrall, 1981). Surveillance of women, therefore, tends to focus on the former locations and if women do indeed have their 'mind on other things', they may be careless enough to make their theft obvious to skilled observers. (Alternatively, having their 'mind on other things' could be interpreted as negating any intent to steal and therein lies a significant dilemma for solicitors.)

In less congruous locations, however, a certain expeditious 'blind-

ness' seems to afflict witnesses and the police. Even when women burglars and muggers are 'seen', the assumption remains that, if they are accompanied by men, they cannot be as dangerous as their male companions:

'Women's different treatment starts before court. The police don't prosecute women in joint offences if the men plead guilty. They want to get the women home - for example, in cases of receiving stolen goods.'

(Solicitor 4)

'Women have been involved with men in burglaries and the police haven't bothered to prosecute the women. I can't give you names, of course, but it definitely happens. They only want "the men".'

(Solicitor 7)

The rightful place for 'normal' women is in the home and the myth persists that women don't (or can't) burgle. But the Pollak myth of masked female criminality is discredited when women on their own, are seen committing serious offences and these may consequently be over-reported (Hindelang, 1979) because of the 'incongruity' between their actions and the 'normal' behaviour of women. One arena where the violent woman is taken very seriously is the domestic:

'If you have a wife who beats her husband, that's a very extraordinary state of affairs, and is looked on as the exception rather than the rule. I prosecuted one not very long ago where the woman had stabbed her husband and obviously the first thing you look at is psychiatric problems.'

(Solicitor 6: 2 - cf. Allen 1987)

Women who use weapons to assault their husbands or boyfriends are often depicted in court as engaging in cold-blooded and pre-meditated action (Dobash & Dobash, 1979; Edwards, 1984). To counteract such images, and thus to 'render them harmless' (Allen, 1987) solicitors have to redefine motivation, as in the example given, in terms of 'psychiatric problems'. Yet the women themselves often see their action as self-defence or perhaps, more accurately, as self-preservation (for, in law, self-defence must be a

response to an immediate threat of harm, whereas assaults on husbands or boyfriends may be the result of cumulative threats or assaults over a period of time and thus, strictly speaking, lack the requisite element of spontaneity). As Carlen found (1983: 42):

'They justified their own extreme acts of violence on the grounds that legitimate and effective protest was not open to women.'

Had women learned (or had they the physical strength for) the more culturally acceptable forms of violence, such as punching, kicking and wrestling, they might not have resorted to more extreme and lethal forms of assault.

Another blow to the myth of masked female criminality is struck by those unchivalrous men who are themselves under threat of imprisonment:

AW: 'Do you ever feel that women are actually taking the blame for offences that have been committed by men?'

Solicitor 6: 'I have known situations where the husband is on a suspended sentence and it's the meter - that's the classic. It does happen, yes. But, by and large, it's only cases in the domestic environment that you can do that - not in a burglary, if he's caught redhanded. If you're both in the supermarket, you can take the whole blame and say he didn't know, when he probably did - or the DHSS cheque that's forged....'

(7-8)

Their motivational explanations

The acceptable (and thus recognisable) motivational explanations of female crime both differ from and are more rigidly categorised than those of male crime. Solicitor 8 put it succinctly:

'Women offenders are needy, greedy or sick!'

Explanations of 'need', 'greed' and 'sickness' are 'offender-specific', in the sense that they are rooted in the personality and pathology of the

individual offender. By contrast, explanations of male crime have become increasingly 'offence-' and 'situation-specific' (e.g. McGuire and Priestly, 1985), thus testifying both to the greater social acceptability of male crime and the greater willingness of courts to consider a variety of motivational accounts in the cases of male lawbreakers.

Ironically, however, although such 'offender-specific' explanations appear to be concerned with the uniqueness of each offender, their homely familiarity absolves both speaker and listener from the obligation to investigate further the account of any individual women lawbreaker. It is already assumed that all accounts will ultimately fit into one of these categories, from which can be automatically deduced the 'correct' response. Not only is it assumed that all accounts will ultimately fit, but it is also assumed that there is no disagreement about the criteria for categorisation. Solicitors and magistrates have no difficulty in 'knowing' in which category to place a particular account - even though there may seem to be times when solicitors may feel they ought to challenge such assumed 'knowledge':

'It isn't really a doctor they need - it's a
cheque book.'

(Solicitor 6: 1)

The implication of such a challenge would be that the boundaries between the 'needy', the 'greedy' and the 'sick' are not as clear and self-evident as one might like to believe. But the utterance of such a challenge contains within it its own source of remedy and absolution, for it allows the recognition of an economic explanation of crime, whilst simultaneously absolving both speaker and listener of the consequences of such recognition. It may be obvious that it is a cheque book which is needed but it is equally obvious that neither the speaker nor the listener is in a position to provide it and the solicitor will only

irritate the magistrate by suggesting otherwise. The recognition of 'a cheque book need' is extra-judicial. It is not an excusing condition and must therefore be represented as 'a doctor need'. Thus, solicitors discover that the redefinition of need as sickness serves to ease both their own and magistrates' discomfort. But the effectiveness of such redefinition is also dependent on the perceived severity of the illegal action. The more serious an offence is perceived to be, the more likely it is that its motivation will be accounted for in terms of 'sickness', provided the nature of the offence remains compatible with the essential 'nature' of womanhood. If, however, the crime is perceived to be both serious and 'unnatural', its motivation may well be accounted for in terms of inherent wickedness of 'greed'. But the motivational rationale of 'greed' is not only employed in relation to 'serious, unnatural' offences. A petty offence (such as the stolen Yorkie bar cited below) may not be considered worthy of categorisation as a symptom of either 'need' or 'sickness'. It may be considered worthy only of contempt and thus fall, by default, into the category of 'greed'. This particular example also demonstrates the power of the vocabulary of food in relation to women. A Yorkie bar is self-evidently not a necessity. It is an un-needed luxury, the motivation for whose acquisition can only be rendered understandable in terms of 'greed', with its inference of 'self-indulgence' and 'selfishness' - an inference which is anathema to the acceptable image of women as 'selfless' and 'self-sacrificing'. Greed, therefore, need not be demonstrated only in serious offences - larger-scale thefts or frauds. Greed is the category into which all motivational accounts fall that cannot be recognised in alternative terms. Greed is the category which invokes contempt rather than sympathy and justifies punishment rather than treatment. It is the category which releases the speaker and the listener from any inordinate struggle for justice, for it is assumed that

that no response to greed can be inherently unjust - all that has to be decided is the classical consideration of proportion. Justice in response to greed is thus transformed from a qualitative to a quantitative issue.

Their appropriate treatment

In the light of these restrictions on the categories of offence and motivation within which female lawbreakers could be 'appropriately' located by solicitors, it is not perhaps surprising that they should also be seen as requiring gender-congruent treatment - that is, treatment which attends to their 'sickness' or 'needyness'.

As will be seen, the solicitors I spoke to expressed considerable ambivalence about the use of strictly 'medical' mitigation in relation to women. They recognised its benefits (as they saw them) but they were also conscious that its reception by magistrates could be miscalculated and their own credibility damaged as a result. But they expressed no such reservations about what might be described as a 'sub-medical' mitigation, with its emphasis on individual 'needyness', (and inadequacy). Such mitigations frequently result in the making of probation orders:

'Women are proportionately more likely to be placed on probation than men; in 1982 they made up 12 per cent of those sentenced by the courts, but 30 per cent of these placed on probation.'

(Walker & Beaumont, 1985: 69)

But, as Walker argues, this does not necessarily indicate leniency. It is true that Community Service is rarely used for women (5% of all such orders made in 1982 were on women - Home Office, 1983) and most solicitors saw it (or said that magistrates would see it) as an inappropriate disposal for women. Equally solicitors were reluctant to recommend fines, because they often did recognise the reality of many women offenders' poverty. The probation order, therefore, was the disposal most favoured

by solicitors and this appeared to be so for two reasons. Firstly, in the event of the women's exclusion from the 'socially exculpatory' and 'legally effective' (Edwards, 1984) category of 'sickness', the probation order provided an alternative route whereby responsibility for her actions could be removed from the woman. Secondly, that the probation order would provide an appropriate arena in which the woman could be encouraged to talk. (The implication here was that the appropriate arena was the private domain of the home, rather than the public domain of the courtroom, where it was considered inappropriate for women to talk.)

'I wouldn't put responsibility for the offending on her mental make-up at all. I think to shove it on to psychiatry is taking the back door. I would much sooner shove it on to probation, because I think the anxiety can be alleviated just as well by sitting and talking, as by taking half a dozen pills every day.'

(Solicitor 6: 12)

By recommending probation orders, solicitors thus exhorted women to talk in private for the purposes of transforming themselves into 'normal' women but not to talk in public for the purposes of justifying themselves or challenging the stereotyping of women. Thus the process of normalising female lawbreakers through solicitors' discourse rendered them muted.

Solicitors' Performance: The Staging of Women's Re-presentation within the Discourses of Domesticity, Sexuality and Pathology

Since the majority of people processed through the courts are from the working classes (Box, 1983), it is perhaps unsurprising that defendants (both men and women) are encouraged to view their own speech as inferior and in need of translation in order to be understood. As Bernstein (1971, quoted in Carlen, 1976) has argued, their restricted linguistic code serves to reinforce only the form of the social relationship in which they find themselves. 'Access to an elaborated code will

depend on access to specialised social positions within the social structure', (Bernstein, 1971, quoted in Carlen, 1976: 103). In the courtroom elaborated code is made available only to the experts.

As was seen in Chapter Three, women are further subordinated, partly because they are already subject to the ideological pressures of gender role stereotyping outside the court and partly because of the arguably 'masculine' characteristics of the courtroom. Firstly, the public nature of the courtroom and its communications, reflecting distinctions between 'male' (public) and 'female' (private) space, may seem especially oppressive to women. Secondly, the adversarial nature of English court proceedings (with its accompanying vocabulary of 'fighting', 'winning' and 'losing') may be seen as irrelevantly aggressive by women. Hence, the expectation of women defendants is not merely that what they say about themselves requires translation, but that they do not have anything to say about themselves. This is perhaps hardly surprising. Since women are seen as 'behaving' rather than 'acting' when they break the law, and since they are seen to be incapable of thinking and making decisions, it is reasonable to assume that they need to be explained, rather than to explain. (The fact that more trouble is not taken to ensure that women are represented, however, suggests that courts are not really very interested in listening to any explanations, preferring rather the comfort of unchallenged assumptions.)

The task of the solicitor in muting the female lawbreaker is to construct an acceptable account from those explanations which are 'speakable' and to erase from the record those which are 'unspeakable'. In practice, this involves explaining female lawbreakers to the court as normal, feminine women who:

a) ideologically deserve sympathy (the appeal to chivalry) because explanations of their lawbreaking are seen to be congruous with 'what are

supposed to be their natural, biologically-determined socio-sexual roles and destinies' (Carlen, 1985: 10);

b) materially (pragmatically) compel leniency because they can be viewed as 'wives, mothers and sex-objects designed for the satisfaction of male desire' (Carlen, 1985: 10).

'I do find that Courts are most reluctant to sentence female offenders to terms of imprisonment, particularly when the offender has children and that it is far easier to persuade a Court to give a female offender a second or even third chance than it is in the case of male offenders. On reflection, whilst in some cases this may be as a result of natural sympathy, in other cases it may simply be that the Court is recognising the reality of the situation in that if mother is sent to prison children will have to be taken into care.'

(Solicitor 5 - written response, my emphases)

The reluctance of courts to imprison women which Solicitor 5 claimed to 'find' (implying a positivistic discovery of the 'truth') reflected, rather the Desire of his own discourse which required him to re-present women within the dominant discourses of femininity - the discourses of domesticity, sexuality and pathology. But the women in this study constituted a threat to this discourse, since they represented the Other which had to be confronted and controlled.

Domesticity

Solicitors place great emphasis on the construction of female lawbreakers as family members, in particular as wives and mothers, with responsibilities that render them deserving of both understanding and sympathy (in relation to the motivation for their offences) and of leniency (in relation to their treatment).

'Courts recognise the importance of the "competent mother" mitigation. With men it's less important; a magistrate will say, "I accept that your client is a paragon of virtue - when he is not robbing his employer!".'

(Solicitor 8)

'Women often have stronger circumstantial mitigation than men - for example, domestic stress.'

(Solicitor 3)

'I use children in mitigation for women but not for men.'

(Solicitor 1)

'I think the trappings of being a female offender can sometimes get sympathy, such as having a couple of children who will go into Care if anything happens to you.'

(Solicitor 6: 6 - emphasis added)

But the 'trappings of being a female lawbreaker' do not always or only trap courts into sympathy and leniency. They also provide a trap for the woman herself. As Hilary Walker (1985: 68) argues, courts can sometimes feel that women are trying to blackmail them by 'sheltering' behind their children and can consequently respond in a deliberately punitive way towards the women. As was seen in Chapter Three, there is also increasing evidence that mothers who do not live in nuclear families are less likely to receive sympathy than those who do:

'Judicial misogyny....results in single women, divorced women and women with children in Care (being) more likely to receive custodial sentences than women who, at the time of their court appearances, are living at home with their husbands and children.'

(Carlen, 1985: 11)

It has been further argued (Dominelli, 1984) that women are sometimes given less credit for their domestic responsibilities than are those few men with such responsibilities who appear in court (presumably as a result of being 'abandoned' by 'abnormal' women):

'Society's expectation is that women should just "get on" with their domestic responsibilities and rely on their own resources for doing so.'

The trap of domesticity is that at the same time as women are being

exhorted to provide for their families many are denied access to legitimate means of provision. By resorting to illegitimate provision they often exclude themselves from the very descriptive category in which they seek, and are exhorted to desire, inclusion:

'CM has a long record, cohabits in overcrowded conditions, has a baby and is pregnant. She was on a suspended sentence. She shoplifted to sell goods for money to pay debts. I thought it was a marvellous thing to do, but the courts had no choice but to send her down.'

(Solicitor 7)

Those for whom crime is a rational, if socially unacceptable, response to the conditions of poverty with which society expects them to contend are debarred from articulating such a logic:

'But when they're got no money - well, they often say to you, "Well, I'll have to do it again" - and where do you go from there? You can't really say that in court. But there's no psychiatry there - it's a deliberate choice - "I've done it to pay the milkman" - or whatever.'

(Solicitor 6: 11)

And therein lies another trap. By offering a rational explanation of her action, which is perceived to be both 'in order' (insofar as it is believed and 'out of order' (insofar as it is illegitimate), the defendant excludes herself from the possible benefits of psychiatrisation.

Finally, the ideal of middle-class domesticity traps a particular class of women whose deprivation itself overdetermines their 'suitability' for punishment. Solicitor 4 summarised it thus:

'The wife of an estate agent, receiving stolen goods - respectable, sheltered upbringing, good wife and mother. The court would think that prison would be so shattering, they'd keep it to a minimum. Whereas, a girl brought up on (a particularly notorious council estate), knocked about by her parents and her husband - she'd need a longer sentence to make any impression!'

Respectable, middle-class wives and mothers are assumed to be so sensitive that they will be reformed by a minimum of punishment (or no punishment at all). Working class women are perceived to be tougher (more like men?) and therefore need to be treated more harshly if any impression is to be made on them, on the grounds that punishment is the only thing 'people like that' understand. Such arguments are reminiscent of medical discourse in the 19th century (Ehrenreich and English, 1979) and the politics of the differential treatment of sickness amongst middle-class and working-class women. Middle-class women and those with husbands and children are seen to be more amenable to non-judicial social controls and less in need of the controls of the criminal justice system, which are reserved for those who are outwith the 'normal' traditional social controls (the workplace for men; the family for women). Deprivation of such controls is seen to produce a different 'type' of woman - a deprived woman who is incapable of making moral choice and is therefore in need of more direct techniques of behaviour modification to control her. The 'suitability' of such women for punishment is, however, reinforced by a contradictory argument which implies that, despite (or perhaps because of - see Dobash & Dobash, 1979, on the 'appropriate victim') being victims of abuse, these women have made choices. Middle-class magistrates find it hard to understand the material circumstances which restrict the choices of such women (for example, the lack of a car forcing a woman to walk alone at night, or the absence of alternative accommodation forcing a woman to return to a violent husband). Instead, these women are seen to have chosen to contribute to their plight by their 'imprudent behaviour' (Pattullo, 1983) and therefore to be at least partially responsible for its consequences.

Sexuality

Solicitors appear to have fewer inhibitions than other court personnel when it comes to exploiting the overtly sexual impact which female lawbreakers may have in court, although this is not an aspect of representation that they would discuss openly with the women themselves. Solicitor 7, demonstrated that 'getting to know the bench' includes taking account of both the gender and age of magistrates and theorising about their likely perceptions and expectations of women, based on an understanding of gender power relations within society:

'Courts are very chauvinistic towards women, always softer. If it's a young woman, I think the male magistrates fancy her; if she's older, it's domestic responsibilities. Some of the older women take a moralistic attitude towards prostitutes - "look what sort of woman she is". Some of the younger women magistrates are genuinely concerned about young prostitutes - they want to get to the bottom of what makes them do it.'

Older men are expected to regard young women primarily as sex objects and the recent increase in awareness of the ideological determinants of incest (or 'father-daughter rape'; Ward, 1985) suggests that even the most paternalistic of magistrates cannot escape that reading of his attitudes. In this way, solicitors reinforce the image of the female lawbreaker as 'whore', an image which is, as Heidensohn explains (1985: 93) complex and distorting. It is an image which constructs all non-conforming behaviour by women as a reflection of their sexuality. For example,

'Offences which have apparently nothing to do with sexuality are - when committed by women - transformed into expressions of female sexuality or the lack of it.'

(Heidensohn, 1985: 94)

But there are risks attached to placing too much reliance on this image, for certain expressions of sexuality may threaten to render male

magistrates impotent:

'You can get women who cry and cry and that can embarrass men magistrates and upset them and put them off their flow or whatever.'

(Solicitor 6: 6)

If the defendant is an older woman, this fundamental manifestation of power through the construction of women as legitimate objects of sexual desire is overlaid by the ideology of familialism which constructs less attractive or else accessible women as legitimate objects of 'husbandly' respect, pity and protection - or chastisement (cf Box, 1983). Familialism thus endows male magistrates with the possessive right to maintain such women in powerless and dependent positions by either chivalrous or punitive means. Women magistrates, as we have seen, are faced with the 'like-us-yet-not like-us' conundrum in dealing with female defendants. Are such women potential sisters and daughters or do they constitute a 'breed apart', whose law-breaking is personally insulting (Dominelli, 1984)? Even when female magistrates appear genuine in their concern about young prostitutes, the explanations that seem to assist them in getting 'to the bottom of what makes them do it' are invariably individualistic and frequently pathological, (see Chapter Seven p. 264-5).

Pathology

The third ideology that dominated solicitors' discourse in the muting of the female lawbreaker was that which allowed her to be represented as 'sick'. The extent to which that sickness could be used as a defence negating intent (as opposed to a factor in mitigation) was limited, especially if specifically gynaecological dysfunctions were involved (see Chapter Two).¹ In a discussion about the relevance of pre-menstrual tension, Solicitor 6 argued that much would depend on the

seriousness of the alleged offence. For a serious offence, such an avenue would need to be explored:

'But you can't use the same argument over a Yorkie bar. On paper, as an academic exercise, I think it is just as right and important that the right decision is made, but at the practical level - and that's what your client is interested in - he's not interested in mens rea or actus reus - he wants you to get the best result for him (sic!) - and sometimes it's not going to be all that easy to get the lady doctor from London to come down and give her menstrual research for a stolen Yorkie bar. In a way it's not right, because if she's not guilty, she's not guilty, but the number of adjournments, the times she'd have to see the doctor and probably have to share with her confidences that she might not be pleased to share....I think, at the end of the day, we've got to weigh it all up and ask, "Well are we just causing more trouble?" Put it to her, by all means but if she says no, then I think you've got to accept that. In a way, maybe she knows what's best for herself.'

(4-5)

Most of the solicitors I spoke to, however, saw the presentation of a 'medical' mitigation (as opposed to defence) as one legitimate way of 'playing to the audience'.

'I would say that there is a more often a 'medical" aspect to the case involving a female offender rather than in the case of a male offender.'

(Solicitor 5)

'....so many of the shoplifting cases involve women and follow the same pattern (middle aged, on nerve tablets, mind on other things, no previous convictions)....so many of the women who are defendants are at that time of life when it is felt that reports ought to be obtained to establish their needs.'

(Solicitor 2)

This invariably involved obtaining remands for the preparation of medical reports, although there was disagreement about whether or not medical reports were asked for more frequently on women than on men. Gibbens, Soothill and Pope (1977) did find gender differences in selection

for medical remands, but these correlated with types of offence:

'The male sexual offender was more frequently selected for a medical remand, whereas for rarer female offences (burglary, fraud and forgery) the proportion of medical remands was comparatively high.'

(1977: 17, my emphases)

They did not, however, accept that this difference was related to any ideological perceptions of certain crimes being incongruous with the 'natural' female role:

'As these offences are often committed by young female drug addicts the comparatively high figure is unlikely to reflect a belief that medical treatment was useful for the offences per se.'

(1977: 20)

The study of Gibbens et al. (1977) also found differences between men and women in respect of psychiatrists' attitudes towards the remand. 86% of the requests for reports on women were considered 'reasonable', compared with 76% for men. However, only 5% of the women, compared with 11% of the men were regarded as having severe symptoms of mental disorder on examination. Women did, however, have a higher incidence of drinking problems and drug abuse, 'and more were regarded as having a personality disorder in addition' (1977: 95). This may be why psychiatrists assessed women as being less reliable prospects for outpatient treatment than men. 49% of the women compared with 45% of the men were regarded as 'definitely unreliable' and that difference was significantly increased (55% of the women, compared to only 24% overall) when considering only remands on bail. For women remanded in custody, the 'unreliability' assessment dropped to 35% compared with 45% overall. (The study, unfortunately, does not directly compare women with men at this point, but the inference must be that women are more likely than men to be remanded in custody if on-going medical treatment is thought

likely to be necessary.)

Solicitor 6 gave a very different reading to female defendants' alleged unreliability. She did not accept that women had a higher incidence of drink and drug involvement and argued that their so-called 'unreliability' was a feature of something else:

'A lot of them haven't got the time to start doing outpatient treatment - certainly not in-patient treatment. They have so many responsibilities outside.'

(10-11)

This 'unreliability' was indicative rather of an enforced self-reliance. Women 'need to be stronger, because they haven't got the money or the opportunities to get the crutches'. Nevertheless, despite recognising that 'if they'd been born into a comfortable lifestyle, they wouldn't necessarily offend' (my emphasis on the recognition of necessity) she still described these women's response to their circumstances as one of depression and 'hysteria', requiring help for which 'a lot of them rely on their own GFs'.

Thus, despite solicitors' explicit recognition of the material and economic determinants of much female crime, the myth that criminal women are mentally ill, emotionally disturbed or in some other way abnormal is tenacious. Solicitor 8 gave me this succinct advice:

'Be suspicious of women who say they don't need help.'

His belief that 'women are more ready to see psychiatrists than men' confirms Gibbens, Soothill and Pope's finding (1977: 64-5) that psychiatrists regarded women on bail as more amenable than men. By comparison with men remanded on bail, women were rated

'as much less hostile, somewhat less sullen, more anxious and friendly and willing to discuss their problems.'

(ibid)

This could be accounted for by the fact that the woman offender

'is more likely to seem alarmed and to appeal for help to the psychiatrist, especially if he is a man.'

(ibid)

The picture is very different, however, if the woman is in custody. She may still seem alarmed but this is now manifested in anger and irritability, 'showing much more violence to staff and other inmates than do male offenders'. Gibbens et al. reflect that this 'clearly highlights the problem of whether one obtains a truer picture of basic characteristics during an interview in custody, or on bail' (1977: 65 - emphasis added). Less positivistically, it seems to raise the question of the extent to which custodial remands contribute towards the construction of mental disorder.

Solicitor B prided himself on obtaining psychiatric reports from a particular psychiatrist (Doctor A) prior to a court hearing to avoid defendants being remanded in custody, his reasoning being that:

'Only the scum of the medical profession works in prisons - interviews consist of shouting through the door, "Are you all right?".'

This particular solicitor had a very high reputation with defendants and probation officers (confirmed by my interview with Pauline) for 'caring' about female defendants. Even when prosecuting, he often 'slipped in' cases involving women when press reporters were having tea-breaks so that the risk of publicity was minimised, or would openly ask them not to report a case (and usually succeed). He was the epitome of Pollak's 'chivalrous' man yet, ironically, it could be argued that the outcome he obtained for his women clients was not always to their advantage, for he claimed that magistrates always followed Doctor A's recommendations (which usually included some form of treatment). Yet we have seen in the preceding chapter that magistrates are sceptical of

psychiatrists and this particular psychiatrist enjoyed a very mixed reputation in the courts. One can only surmise, therefore, that it was the solicitor's eloquence and high standing that achieved results and that consequently his female clients were more likely to end up receiving psychiatric treatment than were the clients of his colleagues.

Other solicitors were less eager to obtain medical reports prior to a request by the court, partly because of the risk of not being able to reclaim the expense through Legal Aid, (a risk, as we have seen, which might be greater with women than men) and partly because of a fear of miscalculating the effect of presenting a medical mitigation. The danger of 'taking a sledge-hammer to crack a nut' was voiced by a number of solicitors and this was associated with the embarrassment that a woman was expected to experience at having to declare such problems. One solicitor said he was prepared to use the word 'menopause' but felt unhappy about spelling out any more details:

AW: 'Is it the mystique of the term that proves a better defence than spelling out a woman's emotional and social conditions - how she feels'?

Solicitor 4: 'Possibly. You certainly get less questioning by using the medical terms. Would the client appreciate being emotionally exposed in the way you suggest?'

AW: 'You mean there's a danger of "overkill"?''

Solicitor 4: 'Exactly. But I take your point. The best mitigation for a first offender is to stress the shattering effect of court proceedings, the humiliation of family and friends knowing - and that's true - so, in a way, I suppose you shouldn't need anything else.'

A number of issues are conflated in this exchange. Firstly, there is an acceptance of the power of particular (preferably medical) words - a power which may be reduced if the word is deconstructed and its components made explicit. This accords with the paradoxical attitude

of magistrates to experts which was demonstrated in the preceding chapter. The use of over-technical language may be rejected by magistrates as 'unrealistic' and mystifying. On the other hand, the use of 'common sense' language can be seen as insulting, on the grounds that 'we don't need an expert to tell us that!'. Steering a course between the presentation of new, unfamiliar knowledge which is threatening, and appearing merely to restate what is 'always-already' known is the solicitor's particular skill. Secondly, there is an (unacknowledged) concern that whilst medicine has the authority to provide a defence to an allegation of crime, social and economic conditions have only had conferred on them the authority sometimes to mitigate punishment. By tailoring his representation to the woman's circumstances and assumed sensitivities, the solicitor overlooks the possibility that she may, in law, be innocent. He appears to prefer the compromise of removing the woman from the more contentious site of medical explanation and relocating her in the site of familial need, whilst retaining her status as hapless, guilt-ridden victim of her own uncontrollable impulses. Additionally, family and friends are portrayed as the 'real' sufferers, who have been betrayed by this woman, rather than as the possible source of her misery - the constraints and pressures against which she may be protesting.

The pressure on a woman to construct an explanation of her action which will appease her family was recognised by Solicitor 6, who argued that solicitors had to assess the consequences of colluding with such a course. The myth of 'providing a service' and 'taking instructions' remains, and solicitors were reluctant to acknowledge the extent to which they control the staging of women's representation:

'You've always got to remember just how far your lady is prepared to go. She may feel that it is far more degrading to go into a witness box and

tell them all those type of details than to just get it over. Quite regularly all they want to do is get it over anyway - they don't think about the weight of the conviction - and I think you've got to respect their wishes and if they are not prepared to bare their private lives for what they class as a very minor matter, and one which they feel they can somehow square with the family, then they could always go away and say, "I didn't really want to talk about all those details" which gives them a safety net as well. You see quite often it's not "Well I admitted that I was responsible for this" but "I admitted it but it was just to save myself telling them all those other bits". So in those circumstances, they wouldn't find it such a pressing need to weigh up the differences. If it's a more serious matter, like murder, you have to put a bit more pressure on them and say, "When you look at what you're facing, your embarrassment about your menstrual cycle pales into insignificance - you've got to pull yourself together and fight for this".'

(4)

This would again seem to confirm Edwards' suggestion (1984: 197) 'that the nature of the offence for which a defendant is charged is likely to have a considerable impact on whether or not a medical report is requested'.

Elsewhere (Worrall, 1981) I have argued that 'medical' mitigations in respect of female lawbreakers rarely claim to be concerned with clinically definable mental illness. Apart from references to 'depression' most solicitors seemed to associate medical reports and psychiatric treatment with gynaecological conditions which are arguably 'normal' - pre-menstrual tension, pregnancy, the menopause. In other words, the normal woman is likely to be viewed as abnormal. But the extent to which such abnormality should be considered to excuse criminal behaviour is a dilemma which has existed in legal discourse since 1914 when Annie Smith (Criminal Appeal Reports 11, 36) was convicted of murdering her 2½ year old child. She appealed against conviction on the grounds of provocation, claiming that she was more susceptible to provocation by her child because she was pregnant. Counsel argued that

'a pregnant woman is not quite normal'. The judge was not impressed and dismissed the appeal, stating that, since Smith was not insane, she knew what she was doing.

Since that time, there has developed a test in cases where provocation is claimed. It is known as 'the reasonable man' test. Provocation can be claimed if the behaviour referred to would be such as would provoke 'the reasonable man'. In *Bedder* (1954) it was held that a man who murdered a prostitute because she taunted him about his impotence could not claim provocation, since 'the reasonable man' is not impotent! Following from this, in *Camplin* (1978), Lord Simon of Glaisdale argued that, whilst the term 'reasonable man' must be assumed to include 'the reasonable woman', the *Bedder* finding must 'preclude the jury from considering that the accused was, say, pregnant' or, presumably, undergoing menstruation or menopause. Such conditions, it was maintained, must fall into the category of 'personal idiosyncrasy' rather than 'universal quality'. In 1982 when the case of Smith alias Craddock eventually reached the Court of Appeal, it was decided that pre-menstrual tension

'....was "wholly unacceptable" as a defence to any crime. Under British law evidence of PMT can only be introduced as an extenuating factor or in mitigation of sentence or as evidence of diminished responsibility (1982 CLR 531).'

(Edwards, 1984: 85)

The degree, therefore, to which 'the reasonable man' recognises 'the normal woman' is dependent not on the strength of proof of any antecedent material condition but on the material consequences of that recognition. The foremost question to be answered is 'What if....?' What if PMT is recognised as a defence? What are the consequences likely to be? They are likely to be the victory of the Other, the re-qualification of women as tellers of their own stories and as Other than NOT MAN. On the other

hand, what if 'feminine conditions' are recognised only in mitigation? Such recognition would allow for the management of the Other, for its very recognition would be a step towards its exclusion from legitimate discourse. Such is the trap in which the female lawbreaker is caught. The effectiveness of medical discourse lies in the recognition of 'feminine conditions' as simultaneously 'universal qualities' and 'personal idiosyncracies', thus allowing the management of female lawbreakers without conceding authority (or, indeed, authenticity) to their accounts.

Conclusion

In this chapter it has been argued that solicitors constitute an important link in the chain of the socio-legal signification of women lawbreakers. By re-presenting the woman to the court, they are concerned both to protect the woman from her own tendencies to present herself in an 'unacceptable' way and to 'normalise' the woman and her actions so that she and they may be presented in a form that is 'recognised' by the court. In carrying out this task, solicitors are mindful of certain rules and conventions governing their representation. The woman's story must be packaged in such a way that her plea of 'guilty' is received without discomfort by the court and her own account of events must be reconstituted or muted. She herself is disqualified as a speaker of her own story and a certain 'hierarchy of credibility' pertains to the explanations offered for her actions. 'Sickness' is the favoured explanation for offences that can be categorised as 'serious but natural' (i.e. congruent with images of femininity) or 'petty but unnatural', and committed by 'respectable' women. 'Need' is an acceptable explanation if the offence is 'petty but natural' and if such an explanation does not imply that 'society' (as represented by the court)

is to blame. Poverty per se is never an acceptable explanation. Offences which are either 'serious and unnatural' or 'petty and unnatural' are likely to be explained in terms of 'greed' or wickedness, especially if committed by 'unrespectable' women, namely, working class women or women with so-called unconventional lifestyles.

In order to secure the best possible position in that hierarchy for their clients, but without damaging their own professional credibility solicitors adopt a strategy which is ostensibly characterised by the paradigm of 'service'. By using the vocabulary of service ('client', 'taking instructions' etc.) solicitors perpetuate the myth of defendant choice and power. Because of the material and ideological constraints on women in society, such vocabulary is particularly ironic in relation to female lawbreakers.

Within this context, solicitors employ a variety of tactics which include recognising when gender-related explanations may or may not be acceptable: the stance of moral neutrality (which renders the 'truth' of an account irrelevant and avoids the need to recognise gender-related injustices); 'getting to know the bench'; and 'playing to the audience' - all of which tactics involve simultaneously acknowledging and reinforcing ideologies about the 'normal' woman.

Underpinning these ideological conditions governing the relationship between solicitors and female defendants is the economic condition of women's particularly precarious ability to pay for legal representation. The readiness of solicitors to utilise 'off the peg', ready-make packages for women lawbreakers may be attributed as much to economic as to ideological considerations.

Thus solicitors construct female lawbreakers within the ideologies of domesticity, sexuality and pathology. Women defendants are re-presented as family members, as sexual objectives and/or as sick. Even those for

whom such constructions bear no relation to reality cannot escape the power of these ideologies. Their only alternative is to be constructed in terms of their exclusion from these 'socially exculpatory' and 'legally effective' (Edwards, 1984) categories. It has been argued that these categories emanate from a socio-legal belief in the fundamental 'normality' of MAN. They constitute concessions to those defendants who suffer the misfortune of being NON-MALE. Exclusion from these categories, therefore, renders the 'nondescript' female lawbreaker neither MALE nor NON-MALE. Thus we return to Lombroso's monstrous 'double exception'.

It has been argued that solicitors play an important role as the 'gate-keepers' to psychiatry and social work. The next two chapters will explore the role of psychiatrists and probation officers in this chain of signification.

CHAPTER SIX

PSYCHIATRISTS: EXPERTS IN TREATABILITY

Introduction

In the two preceding chapters, it has been suggested that attitudes to psychiatric discourse amongst members of the magistracy and the legal profession are ambivalent. Decisions to privilege psychiatric utterances are made on the basis of non-medical factors such as the severity of the offence involved, personal knowledge of the psychiatrist and the extent to which the authority of the utterances can be recognised. Even when authority is ascribed to such utterances, there may remain some scepticism about the 'need to know'.

In this chapter, therefore, psychiatric discourse in relation to criminal activity will be deconstructed and psychiatrists' competence to assess, classify, control and transform female lawbreakers examined. This will be done by analysing information drawn from interviews with six consultant psychiatrists (and one written response to the letter in Appendix II), an interview with a community psychiatric nurse and a day visit to a Special Treatment Unit catering specifically for 'personality disorders' attached to a psychiatric hospital. It is argued that:

Psychiatrists' discourse is constituted by the ideology of forensic medicine, which requires and authorises them to make wide-ranging medical, moral and judicial judgments of female lawbreakers in order to render them describable for the purposes of recognition by magisterial common sense. At the same time, this ideology makes women's eligibility for treatment both ideologically and materially dependent on a far narrower range of gender-stereotyped classifications.

It will be argued that:

(1) far from being a search for scientific 'truth', psychiatric assessment constitutes a programme of power which presupposes a knowledge of the

field of reality in which it intervenes and renders reality in the form of objects that are programmable (that is, treatable - or not);

(2) despite attempts to present itself as a coherent and unified discourse psychiatric discourse is fragmented and contradictory, governed by a set of rules which is inconsistent and elusive. This set of rules facilitates the inclusion and exclusion of female lawbreakers in and from psychiatric diagnosis and/or treatment, not on recognisably 'medical' grounds but on the basis of their programmability as potentially coping women. Such programmability is dependent on the extent to which their pathology can be described as congruent with the expert construction of them as being 'normal' women within the complementary discourses of domesticity and sexuality. Where such congruity does not exist (for example, where the 'marginalised' dysfunctions of gynaecology and personality disorders are diagnosed) female lawbreakers are muted. They are constructed by psychiatrists as being not only outwith psychiatry (that is, beyond the reach of the discourse of pathology which requires/compels medical intervention) but also - and more importantly - outwith domesticity and sexuality. Consequently, the need for treatment is declared - by psychiatrists - to be subordinate to the need for social work and/or penal intervention. Forensic psychiatrists, who both arrogate to themselves and are 'authoritatively charged with' (Carlen, 1986) 'the legal, judicial and moral management of lawbreakers' can claim a transferability of expertise which permits them to speak with equal privilege in judicial and social work discourses. Whilst this 'psychiatric' claim to privilege affects both male and female lawbreakers, it will be argued that the unique constellation of ideological and material pre-conditions which determine the relationship between psychiatrists and particular female lawbreakers results in the making of a specific contribution to the chain of signification of nondescript women. The

rest of this chapter is organised under the following headings:

The Origin of Psychiatrists' Authority

- Probation and Psychiatry

The Rules Governing Psychiatrists' Authority: The Ideological and Material Pre-conditions of Treatability

Gender-Neutral Medicine? The Construction of Ordered Women

- Recognisable Parole
- Redefining Sickness as Neediness

The Origin of Psychiatrists' Authority

Legislation privileges psychiatric discourse at a number of stages in the judicial process and authorises it to intervene in decisions about both culpability (how responsible was the defendant for his/her actions? and management (how should s/he be treated?). Table 6.1 sets out the powers of the court in relation to offenders who appear to be mentally abnormal or disordered. None of these powers, however, is mandatory. Ultimately, psychiatrists are no more than expert advisors to the court, whose influence appears to depend on their ability to establish themselves in court more as 'wise men' (Foucault, 1965) than as men of science. Psychiatrists are expected to enter into what Prins (1985) has called a 'helpful collusion' with the court, passing moral as well as medical judgments on defendants:

AW: 'Do you find that the courts always follow your recommendations?'

Dr. A: 'Always - no; almost always - yes.'

AW: 'And is that so whether or not you are recommending treatment?'

Dr. A: 'This is largely a matter of whether they have got to know you. They have known me for a very large number of years and, rightly or wrongly, I have a reputation for knowing what I'm doing - and if I think a person is a villain and there's nothing wrong with him, I say so quite unequivocally.'

(13-14)

TABLE 6.1:
MENTAL DISORDER IN CRIMINAL PROCEEDINGS -
POWERS OF THE COURT

<u>LEGISLATION RELATING TO DISORDER</u>	<u>EFFECT</u>
<u>AT TIME OF OFFENCE</u>	
1. Special verdict - not guilty by reason of insanity. Criminal Procedure (Insanity) Act 1964 s. 2.	Hospital Order with restrictions. (see below)
2. Diminished responsibility Homicide Act 1957 s. 2.	Reduces murder to manslaughter - increases sentencing discretion.
3. Infanticide	
<u>AT TIME OF TRIAL</u>	
1. Transfer before trial.	Hospital Order with restrictions.
2. Unfit to plead. Criminal Procedure (Insanity) Act 1964 s. 4.	Hospital Order with restrictions.
<u>AT TIME OF REMAND</u>	
1. Remand to hospital for reports M.H.A. 1983 s. 35	One medical opinion. 28 days and renewable to 12 weeks. Consent required for any treatment.
2. Remand for treatment s. 36.	Two medical opinions. 28 days and renewable.
3. Interim Hospital Order s. 38.	Two medical opinions. 12 weeks and renewable to 6 months.
<u>AT TIME OF SENTENCE</u>	
1. Hospital Order Mental Health Act 1983 s. 37.	Two medical opinions. 6 months and renewable. Discharge by Responsible Medical Officer.
2. Hospital Order with restrictions. Mental Health Act 1983 s. 41.	Two medical opinions. Fixed time or unlimited. Discharge by Home Secretary or Mental Health Review Tribunal.
3. Probation Order with condition of psychiatric treatment. Powers of Criminal Courts Act 1973 s. 3.	One medical opinion. In-patient or out-patient. Time fixed or length of Probation Order. Consent required.
4. Guardianship M.H.A. 1983 s. 7.	Nearest relative or Approved Social Worker. 6 months and renewable.

TABLE 6.1 (cont'd)

<u>LEGISLATION</u>	<u>EFFECT</u>
<u>AFTER SENTENCE</u>	
1. Transfer to hospital from prison M.H.A. 1983 s. 47.	Same as Hospital Order s. 37.
2. As above with restrictions s. 49.	Can be returned to prison or released on licence.

Such moral judgments are possible within psychiatric discourse because a) there is no agreement within psychiatry about the nature of 'mental illness' and b) there is no agreement about the relationship between 'mental illness' and criminal activity. Increasingly (as for example, in the cases of Peter Sutcliffe (Prins, 1985) and Mirella Beechook (Guardian, 1 May 1987)) courts appear to reject the assertion that 'mental disorder' negates intent to commit a crime, thus placing a question mark over its effectiveness in reducing culpability. Even if a court does accept that a defendant is, by reason of 'mental disorder', less culpable than otherwise, this does not logically dictate whether s/he should be treated more leniently (because s/he is more deserving of sympathy and in need of protection from the full wrath of the law) or more harshly (because s/he is likely to be less amenable to non-punitive measures, dangerous and in need of control). Consequently, the allocation of 'mentally abnormal offenders' directly to sites of medical jurisdiction (that is, through Hospital Orders or into the care of Social Services departments through Guardianship Orders) is by no means assured. On the contrary, whilst psychiatric discourse has inseminated the whole of the judicial and penal process (Carlen, 1986), its claim to authority emanates as much from its power to exclude defendants from treatment as from its power to admit them to it.

Psychiatrists' authority is, however, itself subject to political and economic restriction. Even when a consultant is willing to offer a hospital bed, staff unions may veto that decision on the grounds that they cannot manage potentially violent or 'dangerous' patients (Benn, 1985). Hospitals are not legally obliged to make places available to courts and the provision which enables courts to summons Regional Health Authorities to explain their refusal to accept a patient is very rarely used.

In this political climate, Special Treatment Units, such as one

visited in this study occupy a crucial role. Their willingness to accept for treatment those whom other psychiatrists have rejected as untreatable makes them potentially attractive propositions for courts. However, as will be seen, they consider that they have to be very selective as well - partly for ideological reasons (only the 'right' type of personality disorder is considered suitable) but partly because they, like ordinary hospitals, lack secure accommodation and cannot manage the most difficult offenders. A further restriction on the success of the Unit, it was argued, was the absence of community psychiatric nurses, which was seen to account for the poor provision of after-care and the consequent need for frequent re-admission.

For many years the need for intermediate provision for mentally disordered offenders in the form of Regional Secure Units has been acknowledged. Following the Butler Committee Report (1975), the government allocated £14 million for the creation of one unit in each Regional Health Authority, providing a total of about 1000 beds. To date, barely a fraction of that number has been provided, and the NHS has been accused of diverting the money to other projects, to finance pay awards and to pay VAT bills (Benn, 1985).

One of the consequences of this stagnation of provision for mentally abnormal offenders is that in preference to making Hospital or Guardianship Orders courts frequently resort to what has come to be termed the 'psychiatric probation order' - probation orders which include a condition that the defendant receive psychiatric treatment as either an in-patient or an out-patient. An examination of the history and use of this provision demonstrates the uneasy relationship which now exists between psychiatric and probation discourses.

Probation and Psychiatry

Courts have always had wide powers of discretion in dealing with trivial offences where there is doubt about the offender's 'mental condition'. The Probation of Offenders Act 1907 did not even require the Court to proceed to conviction:

'1. (1) Where any person is charged before a court of summary jurisdiction with an offence punishable by such court and the court is satisfied that the charge is proved, but is of the opinion that, having regard to the character, antecedents, age, health, or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment, or any other than a nominal punishment, or that it is expedient to release the offender on probation, the court may, without proceeding to conviction, make an order either -

- i) dismissing the information or charge, or
- ii) discharging the offender conditionally on his entering into a recognizance, with or without sureties, to be of good behaviour and to appear for conviction and sentence when called on at any time during such period, not exceeding three years, as may be specified in the order.'

Provision was also made for such offenders to be supervised by Probation Officers s.2(1)) whose duties included both surveillance and befriending:

- '4. It shall be the duty of a Probation Officer, subject to the directions of the court -
- a) to visit or receive reports from the person under supervision at such reasonable intervals as may be specified in the probation order or, subject thereto, as the probation officer may think it;
 - b) to see that he observes the conditions of his recognizance;
 - c) to advise, assist and befriend him, and, when necessary, to endeavour to find him suitable employment.'

The Mental Deficiency Act 1913, 'to make further and better provision for the care of feeble-minded and other mentally defective persons' gave the courts very similar powers, although confined to those whose defect

was deemed to have been apparent 'from an early age':

'2.(1) A person who is a defective may be dealt with under this Act by being sent to or placed in an institution for defectives or placed under guardianship....

b) if in addition to being a defective he is a person....

ii) who is found guilty of any criminal offence....'

The 1913 Act also introduced more precise definitions of mental deficiency, abandoning the older term of 'lunatic'. Three categories, 'idiot', 'imbecile' and 'feeble-minded' described various degrees of the condition now termed 'subnormality' but a fourth category foreshadowed the construct of 'psychopathy':

'1(d) Moral imbeciles; that is to say, persons who from an early age display some permanent mental defect coupled with strong vicious or criminal propensities on which punishment has had little or no deterrent effect.'

These two Acts represent, in embryonic form, the dilemma which has since developed regarding the disposal of those who are defined as mentally abnormal and have committed an offence. As Walker and McCabe (1973: 79) point out, the central concern has not been the strictly legal one of responsibility at the time of the act but the comparative expediency of psychiatric and penal disposals after conviction. The use of traditional legal devices, such as special verdicts (M'Naghten Rules), diminished responsibility and charges of infanticide account for an insignificant proportion of the disposals of mentally disordered offenders (see Table 6.2)

The Criminal Justice Act 1948 made it possible for courts to include specific conditions in probation orders, thus raising the question of whether a probation order was still 'instead of sentencing' the offender (s3.1). The specific conditions that could now be included were those of residence (s1.4) and treatment for a mental condition (s4). A medical

TABLE 6.2:
DISPOSALS INFLUENCED BY PSYCHIATRIC EVIDENCE, 1981

	M	F
Psychiatric probation orders		
in-patient	237	41
out-patient	701	226
Hospital orders		
without restriction on discharge	559	122
with restriction: Special Hospitals	114	16
NHS Hospitals	99	15
Guardianship orders	1	0
Found unfit for trial	(23)	(5) ⁽¹⁾
Insanity defence	(3)	(0)
Infanticide		
Hosp. order (no restriction)	-	(2)
Probation	-	(7)
Supervision (juvenile)	-	2
Diminished responsibility manslaughter		
Conditional discharge	0	1
Hosp. order (no restriction)	(9)	(3)
Hosp. order (with restriction)	(21)	(5)
Probation	(3)	(7)
Prison determinate)	20	0
Prison (life)	11	3
TOTAL	1742	426
<hr/>		
Transferred from prison to hospital before or during sentence	105	
Transferred from prison to hospital at date of release	15	
<hr/>		

(1) Bracketed figures excluded from total, being already included in figures above for hospital orders or probation orders.

Ref: Walker, N. (1985: 324).

practitioner was to give evidence that 'the material condition of an offender is such as requires and as may be susceptible to treatment' (s4.1) but is not such as to justify being certified under the Lunacy Act 1890 or the Mental Deficiency Act 1913. The offender was to be required to undergo treatment for up to twelve months as either a resident or non-resident patient of a medical institution or under the direction of a specified medical practitioner (s4.2).

The primary concern of this Act was not the treatment of mental illness or deficiency, but the prevention of crime and s4 was designed to reinforce a penal measure, rather than ensure the hospital attendance of an offender. Section 3.1 of the Act makes the purpose of conditions clear:

'....a probation order may in addition require the offender to comply during the whole or any part of the probation period with such requirements as the court, having regard to the circumstances of the case, considers necessary for securing the conduct of the offender or for preventing a repetition by him of the same offence or the commission of other offences....'

Thus, an obligation was placed on the medical profession

'to extend its scope beyond the treatment of mental disease and the care of mental defectives into the field of personal conflicts within the sphere of normal mental life. In the administration of criminal justice, medical psychology is no longer restricted to the negative function of determining the limits of criminal responsibility, but has become part of preventive medicine by contributing to a rational classification of offenders and to the design and application of methods of remedial treatment of social deviants.'

(Grunhut, 1963: 6)

Grunhut himself is able to separate the behaviour from the state of mind:

'It would be the aim of medical treatment to reach a state in the patient's mental condition where

ordinary probation casework could be pursued with prospects corresponding to those in normal probation cases.'

(1963: 29)

Nevertheless, he recognises a fear amongst Probation Officers that the new psychiatric probation order was, in practice, being (mis)used 'to induce offenders who could not be 'certified' to undergo what was virtually compulsory treatment' (Walker and McCabe, 1973: 67). And, perhaps more importantly, underlying that fear was the 'exaggerated expectations of the general public' (Grunhut, 1963: 29) and the judiciary that psychiatry could reduce crime where surveillance and befriending (the traditional probation tasks) had failed.

Prior to the Mental Health Act 1959, psychiatric probation orders provided sentencers with an apparently useful compromise between penal and medical measures. However, the spirit of the 1959 Act required that offenders considered to be mentally disordered should, wherever possible, be dealt with by medical measures. Section 60 of the Act provided not only for offenders to be admitted to hospital, but also for them to be supervised within the community by the Local Authority Social Services, rather than by the Probation Service, under a Guardianship Order. Although certain restrictions applied to the use of Guardianship Orders (in the case of psychopaths, they had to be under 21 years old),

'It is intended to supplement community care on an informal basis in cases where powers of control over the patient are needed for the patient's own welfare or for the protection of others.'

(NAMH Guide to the Mental Health Act 1959, 1969)

At the time, Max Grunhut's study of Psychiatric Probation Orders was in progress and so no guidance was issued regarding the respective uses of Guardianship and Psychiatric Probation Orders. When Grunhut's study was published, it concluded that,

'Probation will still be used where there are prospects that the offenders' mental condition can improve in a comparatively short time.'

(1961: 51)

In fact, Guardianship Orders were hardly used at all and the Butler Committee (Report of the Committee on Mentally Abnormal Offenders, 1975) clearly felt that they should be used more:

'It is our view that guardianship orders offer a useful form of control of some mentally disordered offenders who do not require hospital treatment....we would encourage the development of closer liaison between the courts and the social services departments of local authorities.'

(s15.8)

The Mental Health Act 1983 has attempted to make Guardianship Orders more attractive to both courts and local authority social workers by enhancing the status of the social workers (only those 'approved' can be involved) and by restricting the scope of the order to include only specific requirements such as residence, attendance for treatment or training, and accessibility to the patient by a doctor. The more wide-ranging obligations of providing care and support are no longer part of the order. (The age restriction on psychopaths has, however, been removed.

Despite this attempt to shift more responsibility for those described as 'mentally disordered' towards the social services departments, the psychiatric probation order has survived the Powers of the Criminal Courts Act 1973 virtually unaltered (s.3) and the Mental Health Act 1983 with barely a mention. It remains the order most frequently used by the courts in dealing with mentally disordered offenders whose offences are of a relatively trivial nature (Walker, 1985). Yet the criteria for its use and non-use are far from clear. The original aim of this thesis was to study only those cases where women had been made subject to such an

order but it quickly became apparent that the imposition of such orders had little to do with any 'objective' assessment of a woman's need for psychiatric help. Consequently, the inclusion (or not) of conditions of psychiatric treatment in probation orders made on female offenders is now itself an object of discourse in this thesis, rather than an already given characteristic of the women studied.

The Rules Governing Psychiatrists' Discourse: The Ideological and Material Pre-conditions of Consultancy

As has been seen, psychiatrists are afforded a privileged status within the criminal justice system but they have no right of access to courts. They may speak only at the request of magistrates, solicitors and probation officers and what they say has to be expressed in a form which is recognisable within the discourses of magisterial common sense (as described in Chapter Four), re-presentation (as described in Chapter Five and strategic working as will be described in Chapter Seven). That recognition is dependent less on their legal powers (which, though extensive, can only be invoked at the discretion of 'non-experts') than on their ability to enter a 'helpful collusion' which eases magistrates' discomfort in relation to the organisation of the difference which constitutes the 'culpable not culpable' and 'treatable/punishable' distinctions. Courts require psychiatrists to present themselves as 'wise men' who have the power (that is, the authority plus the knowledge plus the material means) to create order out of disorder.

One might almost argue that forensic psychiatrists are themselves muted! But psychiatric discourse is not dependent for its survival and privilege on its recognition by judicial and penal discourse; it draws its real power from elsewhere - from the ideologies and material conditions of medicine and the health services. If courts have the right to reject psychiatric discourse, then psychiatrists are under no obligation to

recognise 'the putative legal subject - s/he, who having (or not) the capacity to know better, breaks the law' (Carlen, 1986). Thus the subject of forensic psychiatry's inquiry is 'forever elusive'. The conditions under which legal subjects are recognised by psychiatry are governed by the rules of consultancy - a strategy which perpetuates the myth of the authority of diagnostic input coupled with an absence of responsibility for the consequent outcome. As Nils Christie has said:

'Recently there has been over-emphasis on using medical personnel for the diagnostic stage. A maximum of energy is used for giving advice to the courts and little is left for treatment.'

(Wolstenholme and O'Connor, 1973,
quoted in Carlen, 1986)

At the time of these interviews, the Mental Health Act, 1983 was being introduced and with it the formal 'treatability' criterion which requires that, before making a hospital order in respect of an offender suffering from psychopathic disorder or mental impairment, it must be satisfied that medical treatment is 'likely to alleviate or prevent a deterioration of his condition'. The expressed purpose of this criterion was to prevent the compulsory incarceration of mentally handicapped and other 'abnormal' people simply on the grounds that they were 'abnormal' if they were neither dangerous nor being actively medically treated. It has also been argued that it is wrong to make an offender who is considered untreatable subject to a hospital order, release from which depends on response to treatment (Ashworth and Gostin, 1984). The effects of the criterion, however, have been contradictory. As has been demonstrated in previous chapters, the term 'personality disorder' is used simultaneously to include and exclude the lawbreaker in and from psychiatric discourse. It is the mechanism by which the parameters of this discourse can be rendered infinitely flexible. It enables the psychiatrist to assess and judge, without obliging him to treat. It

permits him to elevate personal preferences to the status of scientific utterances:

'Well some of them are not treatable. You have to decide in terms of age and behaviour and other factors whether there are symptoms that you can modify. With some people who have longstanding personality disorders that have become entrenched and intractable you have to face the fact that there is nothing you can do. This is the general approach to everyone - men and women - you have to be very selective. That's the approach of the new Mental Health legislation - that they've got to be treatable.'

(Dr. D: 34)

Nurse A, however, felt such 'scientific' argument to be spurious:

'Labels like that don't mean anything - they don't mean anything to me. I've been listening to them for 13 years. The criteria for diagnosing something like that is so vague and subjective that one person will be diagnosed as personality disorder by one psychiatrist, someone else won't diagnose it as that. If I was referred someone like that I might use the terms but when you are actually dealing with someone it goes out the window - although you are obviously still influenced by it - and I would look more at what they are doing, rather than looking at this label and saying "For this label you do such-and-such". Labels are put on people because the medical world likes to have things cut and dried, and there are certain treatments for certain labels.'

(47)

And certain non-treatments for certain labels!

Dr. A was prepared to refer 'personality disorders' to a specialist 'if they can convince me they would cooperate'. But he added:

'I myself never undertake treatment of people with personality disorder, largely because it has to be undertaken by enthusiasts, who are interested in this, and what's more, who have a specialised unit with staff nurses and social workers who have a similar orientation.'

(13)

Selectivity and enthusiasm were identified by these psychiatrists as the

key pre-requisites for engaging with personality disorder. Selection for treatment appeared to be dependent, not on specific criteria, but on ability to render oneself 'convincing' - that is, presumably, 'likeable' and not too anti-social in one's habits! When asked about the criteria used for admission to the Special Treatment Unit, Nurse B replied:

'They have to function on the ward - be able to talk - not violent under pressure - not too depressed - mustn't drink on the ward. We take anyone who wants to come except those of low intelligence, those who are clearly mentally ill and the extremes of violent or sexual crimes because we lack a secure unit.'

One gained the impression of a very select clientele indeed!

The formal 'treatability' test applies only to defendants diagnosed as suffering from psychopathic disorder or mental impairment, and not those diagnosed as suffering from other forms of mental illness. However, orders made on the latter are subject to review after six months and only renewed if the defendant's condition is 'treatable'. This has resulted in an informal 'viability' criterion (Ashworth and Gostin, 1984), the ideology of which has permeated the diagnosis of all defendants who are referred for psychiatric assessment.

It appeared to be the case that two rules governed the nature of the consultancy offered to the courts by the psychiatrists interviewed in this study and it is argued here that, whilst these affect both male and female defendants, it is possible to identify gender-specific dimensions to each. These rules which govern a psychiatrist's view of the 'appropriateness' of a referral, his diagnosis and his readiness (or not) to accept responsibility for treatment are:

1. The paradigm of mental illness from which the psychiatrist's terminology was selected, and
2. The extent to which the psychiatrist succeeded in redefining 'evidence' of sickness (which he accepted as his domain) as 'evidence'

of social need (which he ascribed to the domain of social work/probation).

Identifying the gender-specific implications of the rules governing psychiatrists' discourse is a task which is both easy and elusive. It is easy in the sense that, since women dominate the official statistics of psychiatric treatment, it could be argued that the rules outlined so far in this chapter are applied routinely primarily to women rather than men. As Allen (1986) observes, 'the female is not the "special" but the normal form of the psychiatric patient'. On the other hand, medicine, like law, views itself as 'gender-neutral'. With the marginalised exception of dysfunctions emanating from gynaecological disorders, its categories do not recognise distinctions of gender per se. Exposing the 'unspoken "she" of psychiatry....behind the bland "he" of the psychiatric textbooks' (Allen, 1986) is, therefore, a difficult task, especially if one wishes to avoid the pitfall of arguing that there exists a 'patriarchal complicity in the apparent mental morbidity of women', which is constitutive of psychiatry (rather than contingent to it) - an argument which Allen (1986) persuasively demonstrates to be untenable.

Despite this dilemma, it is possible to identify from the information obtained from the psychiatrists in this study some indications of specific mechanisms which permit them to describe most of their female patients as 'normal' women (that is, with a 'normal' propensity for sickness). Those mechanisms, however, serve concomitantly, to ensure that the particular women in this study are excluded from that category and are thus rendered nondescript.

Gender-Neutral Medicine? The Construction of Ordered Women

Recognisable paradigms

Some psychiatrists acknowledged that they and their colleagues might be committed to different 'models' of mental illness and that this would materially affect their diagnoses and interventions:

'There are two basic schools of psychiatry - those who believe that a psychotic illness is medical and those who believe that it is an extension of something else. I happen to be towards the behaviour model rather than the medical model, and I talk about schizophrenogenic situations rather than somebody who has got something wrong with their mid brain. So you have to start by knowing what sort of a person I am professionally.'

(Dr. B: 27)

Certain paradigms were also seen to be more acceptable to courts than others:

'If you use terms like "depression", "obsession" and "schizophrenia" you don't get cross-examined, but if you start using psycho-analytical terms, talking about a "subconscious wish to be punished", that's not acceptable. I had a woman recently who was fined for shoplifting, but went out and did it again immediately - as though she wanted more punishment. But you can't say that in a report.'

(Dr. C)

The prohibition of psycho-analytical discourse from the utterances of psychiatrists in court could be viewed as having a gender-specific effect on the assessment of female lawbreakers. As has been seen in Chapter Two, psycho-analysis can be viewed as a challenge to the clinical model of psychiatry and, as such, has been used by feminists to offer 'alternative' therapy to women (Eichenbaum and Orbach, 1982). Despite the limitations of feminist therapy (Allen, 1986), its exclusion from 'respectable' psychiatric diagnosis places yet one more restriction on the range of categories within which female lawbreakers

can legitimately be described.

One psychiatrist who admitted to working psycho-analytically (Dr. B) suggested that there was an additional dimension of class to this restriction. He believed that the female lawbreakers that he saw were likely to be from social classes 3, 4 and 5, whereas:

'We have a professional department (nearby) where they head their letters, "Forensic Psychiatry" and all that sort of thing. Your polite (middle class) lady who is filling her knickers with goodies from Woolies is likely to be sent to very proper psychiatrists elsewhere, whereas hack psychiatrists like myself wouldn't see her.'

(22)

It would appear possible to infer from this that the effectiveness of paradigms differs according to the social class of the referred woman. The 'respectable' 'middle class' woman may be described as 'depressed' (clinical model) and treatable by drug therapy - that is, capable of being 'rendered undepressed' (Dr. A). Alternatively, she may be described in terms of her 'cry for help', 'sense of guilt', and her 'wish to be punished' or to 'commit social suicide' (psycho-analytical model). Such a description will normally be made within a relationship of benevolent paternalism:

'Many would prefer to be in prison. We're too kind here - no structure. But it would be irrational to punish in those circumstances, wouldn't it?'

(Dr. F)

For such women, the vocabulary of punishment can be introduced as safely symbolic. For the working class woman, however, there is a real danger that courts may take it literally and that the answer to Dr. F's rhetorical question may turn out to be a resounding 'No!'.

The invocation of conflicting paradigms of mental illness also poses difficulties when deciding the appropriateness of referrals to

psychiatrists. Nurse A was not convinced that the right people were being referred:

'What tends to happen is that we get people referred for what I would say are the wrong reasons and the wrong type of people, i.e. the type of problems that I would say I could deal with best tend not to get referred. This is often a fault of people not being assessed properly in the first place. Things like neurosis - a lot of people wouldn't identify it as neurosis. A patient might go along to a G.P. complaining of aches and pains or irritable - complaining of the signs and symptoms of anxiety or stress - and there's a tendency that it's treated with tablets, rather than sitting down and looking at why is the person like this - it's not an illness - why is the person behaving like this. People tend not to get referred for this kind of reason - they are referred because they are ill, whatever that means....'

(Nurse A: 40)

Because the parameters of what might constitute mental illness (and hence an 'appropriate' referral) are drawn so widely, it becomes essential within psychiatric discourse that there exist a person with unchallenged authority to decide what does constitute mental illness in any given case. The turning of a collection of disparate symptoms into the intelligible signs of a disease by the trained gaze of a doctor is central to the task of clinical analysis. As Foucault (1973) argues, the indispensable power of the doctor to describe a disease emerged in the 18th century when medical science began to reject the 'essential' paradigm of disease (that is, the belief that there existed an 'ideal form' of disease, whose whole was greater than the sum of its symptomatic parts). In its place was established a paradigm within which 'symptoms do not by themselves announce the disease: they are turned into intelligible signs....by a trained observer' (Cousins and Hussain, 1984: 160).

The gender-specific implication of this is that many of the qualities

ascribed to the 'normal' woman are also viewed as constituting 'intelligible signs' of mental disorder. When to this is added the statistical abnormality of female lawbreaking, the relationship between criminal activity and mental disorder in women seems over-determined. Dr. D explained that approximately 25% of the referrals his forensic unit received were women. In reply to my comment that this seemed high in comparison with their rate of offending, he said:

Dr. D: 'Yes, but as you are aware, they have a higher psychiatric morbidity - or are thought to have. Carol Smart (1976) makes observations about that....(laughs)

AW: 'Do you feel that all the referrals of women are appropriate?'

Dr. D: 'Yes, almost all of them. I mean, what she says is nonsense. What she says is that men can't understand women getting into trouble unless they can interpret it in psychiatric terms. That's rubbish. In fact, relatively few get into trouble....When they do, it's because they are a very disturbed group.'

(29)

In the light of such comments, it is unsurprising that most of the psychiatrists viewed most of the referrals of female lawbreakers as 'appropriate':

'When a woman offends, the usual reaction is, "I wonder what's wrong with her". When a man offends, it's a different reaction. So in that respect the referrals are appropriate, insofar as everyone is worrying about what has gone wrong with this poor woman!'

(Dr. B: 21)

'Women usually do suffer from treatable disorders - usually depression. They suffer more functional disorders than men - with men it's more inadequacy, low intelligence and drink.'

(Dr. C)

Yet, having said that most referrals of women were appropriate, psychiatrists still reserved the right subsequently to redefine those

same symptoms as being beyond their competence to treat:

'The women I see at (the Probation Hostel).... almost without exception, are, loosely, personality disorders or rather late developing adolescents, rather than being psychotic or severely mentally ill. But occasionally, the staff there find their behaviour so bizarre or worrying that they wonder whether they are psychotic. But I don't think I've found a psychotic person there for two years now.'

(Dr. B: 20)

'Diagnosis is very important for women. There are far fewer of them offending - that's a cultural thing - but they are much worse. Very few offenders are mentally ill - many have personality disorders.'

(Dr. G)

'I would have said....about 50 per cent of the women either don't suffer from a treatable mental disorder or the disorder is in the form of psychopathic traits, or personality disorder, and in that event it's a moot point whether there is treatment as such.'

(Dr. A: 13)

Redefining sickness as neediness

In psychiatric discourse the notion of 'treatability' has been turned on its head. In order to render themselves treatable, potential patients have to satisfy certain social criteria. Conversely, if psychiatrists decide that they will not or cannot treat a defendant, they can redefine the symptoms of mental disorder as symptoms of something else - in particular, as symptoms of social, rather than medical need. The consequence has been that psychiatrists have partially appropriated the paradigm of 'anti-psychiatry' whilst failing to vacate the site of privilege which is an essential pre-condition of that discourse. They have claimed the right to redefine mental illness as 'problems of living' (Szasz, 1965) but have not simultaneously disqualified themselves as expert speakers. On the contrary, they have transferred their expertise to a competing discourse - that of social work.

Only one psychiatrist appeared to appreciate the irony of adopting this position:

'"Is it to this man's disadvantage to go to prison?" I don't like being asked that. It's to everyone's disadvantage but it isn't any more important coming from a psychiatrist. I used to think I could do everyone's job - I'm learning my limitations as I get older.'

(Dr. C)

But even Dr. C. still considered himself competent to enter social work discourse by making recommendations that defendants would 'benefit from the support of a sympathetic probation officer.'

Psychiatrists retain their power as overseers of social work in the criminal justice system by redefining evidence of sickness as evidence of neediness. The specific mechanism employed in relation to the non-descript woman is that, having been defined as an 'appropriate' referral for psychiatric assessment, she is then constructed by psychiatric discourse not within the discourse of pathology but within the discourses of domesticity and sexuality. She is described as needing not psychiatric but social work intervention. Dr. G's assessment of Maureen (taken from her file) illustrates the point:

'I am more convinced every day that her problem is basically a marital one. I think that, as a psychiatrist, I have very little to offer this lady. Most of her problems are social ones.'

As has been seen, one of the ways in which psychiatrists redefine female lawbreakers is by arguing that they are personality disordered rather than being 'really' mentally ill. A second way, however, is to redefine dysfunctions arising from gynaecological disorders as being 'just' forms of stress. It has already been argued in Chapters Four and Five that magistrates and solicitors are sceptical of explanations that attribute criminal behaviour to such disorders and so, it seems, are psychiatrists:

'I think that this is a fashionable bandwagon to jump onto and that PMT - where it exists - is simply another form of stress. You can be depressed with PMT and shoplift or break your child's arm or you can get depressed and break your child's arm because you have arthritis or because your husband's out drinking. I don't think, by and large, it differs from any other form of serious stress and, of course, when you write a report and there are extenuating circumstances - things you think should be considered in sentencing, not when considering guilt - then it is fair to say, "This woman is depressed because of PMT, or she has arthritis or her husband is always beating her or whatever...." It's just a form of stress.'

(Dr. A: 17)

'I have a few cases where shoplifting has been associated with pre-menstrual tension - not very many. I think it is occasionally and rather rarely associated with uncharacteristic behaviour. It's not common. It's been vastly overrated in the last year or two in its importance. I've had a few rare cases - a murder case - I seem to remember that the woman was controlled on hormonal drugs and she wasn't taking them. It was known that in the pre-menstrual phase she used to behave very strangely and aggressively and that was a case of significance. But I wouldn't put the explanation in terms of PMT, but rather in terms of the mental and emotional disturbance that happens at that time, one of the causes of which might be pre-menstrual tension. But I think it's asking for trouble to try explain it away simply on PMT. It's just rare cases where it has very bizarre effects - but in relation to the number of people who suffer from PMT it's insignificant.'

(Dr. D: 33)

Dr. D is recognised as an authority on infanticide and his expressed views therefore both reflect and reinforce judicial attitudes:

'The wording of the Infanticide Act (1938) requires it to be shown that the woman suffered from a disturbance of the mind due to the fact that she had not fully recovered from the effects of childbirth or lactation and I think there is perhaps a slight hardening of view that it was not because they had not recovered from childbirth or lactation but that they suffered from depression anyway - then it

would be dealt with as manslaughter, although the outcome will be the same. It's rare for them to be sent to prison - they're nearly always put on Probation.'

The substitution of socio-economic discourse (in particular, the vocabulary of 'stress') for gynaecological discourse might be welcomed by some feminists. For instance, Susan Edwards (1984) has argued that female lawbreakers should resist attempts to reduce their behaviour to their biology. Yet, as O'Donovan (1984) has indicated, such changes of orientation amongst professionals still raise problems for women. The removal of gender-related excusing conditions in the face of continuing material inequality between the sexes may increase rather than reduce discriminatory practices. The argument that 'men, too, are subject to the social stresses of rearing children, particularly if unsupported by women' (Edwards, 1984: 96) does not logically invalidate the differential treatment of women in circumstances that are materially and specifically different (after all, men do not produce babies and if a woman says childbirth has certain effects on her, why should that statement be declared self-evidently invalid?). Equally, whilst child-rearing is undoubtedly stressful for both men and women, in reality, the 'unsupported' father is likely to receive more sympathy in any case than the 'unsupported' mother, who is presumed to have 'natural resources' of 'maternal instincts' to help her survive adverse social conditions (Dominelli, 1984: 101). The substitution of one discourse for another does not necessarily alter the power relationship between the describer and the described, nor does it guarantee any greater degree of control by women over their own destiny. Psychiatrists still arrogate to themselves competence to explain female lawbreaking behaviour and to judge culpability as well as treatability.

Ironically, women who are accepted as being 'treatable' are often viewed as using domestic 'stress' as an excuse for not cooperating. As

has been seen in Chapter Five, psychiatrists tend to view female lawbreakers as 'unreliable' about keeping appointments. At the Special Treatment Unit, one of the nurses told me:

'Most women are here for marital problems, alcohol or drug abuse (that is, usually prescribed drugs). They are no particular problem on the unit, although some use their children, as an excuse for not settling.'

Nurse B felt that:

'Women could use the Unit more but they don't really want to make the decisions that will change their situations.'

Dr. G echoed this:

'Women use domestic responsibilities as an excuse for not coming into the Unit - they look for any excuse to avoid the issue.'

(my emphasis)

Women, therefore, are blamed for not seeing 'the issue' as being that which psychiatrists describe as being 'the issue'. But this is hardly surprising, since the women so described have in reality been set yet another trap. Their attempts to demonstrate their maternal competence to the court are now used in evidence against them - apparently indicating a lack of co-operation, an unwillingness to undertake 'treatment'. The dilemma is further compounded when one begins to consider the 'treatment'.

The Unit is run on the lines of a therapeutic community, which means regular group meetings and patients are allowed to go home at weekends. The average stay, according to Dr. G

'if they survive the first week, is about 2 months - sometimes four.'

Such an experience would appear to be well-suited to the needs of women who might otherwise be at risk of imprisonment, provided they could make

the necessary child-care arrangements. However, there was evidence that the regime in the Unit served to reproduce the very familial roles which patients had, for one reason or another, found intolerable outside:

'You couldn't get a greater mix of social misfits, but it works. There's no great secret - it's just like an extended family - we play family roles.....'

(Nurse B)

What happens at the Special Treatment Unit is therefore located both discursively and physically (weekdays spent in hospitals, weekends at home) at the interstices of medico-psychiatric, familial and penal discourse. The expectation that, as 'social misfits', they can nevertheless be 'fitted' into family roles in a medical setting to which they have been sent by a judicial authority reproduces for female lawbreakers the very descriptive trap which they have sought, through their lawbreaking, to avoid. It seems, therefore, that whatever benefit women might obtain from the experience of communal living provided at the Unit will continue to be limited by its discursive location and the very real material problems of retaining a 'weekend home' and being a 'weekend mother'.

It could be argued that at the Special Treatment Unit, that psychiatry has laid claim to what is basically an experiment in communal living. Nevertheless, here, as with all psychiatric treatment ordered by a criminal court, it seems to be professionals other than psychiatrists who carry the main responsibility. Psychiatry's desire to oversee social work has two consequences for probation officers.

Firstly, probation officers frequently have to accept recommendations for probation made by psychiatrists. The following are by no means uncommon recommendations in psychiatrists' reports:

'In my opinion, and with respect to the court, should she be found guilty of the offence with

which she is charged, her best interests might be served by close and strict probationary supervision.'

(Unknown psychiatrist reporting on Jean, who, at this stage, had not even been found guilty!)

'I feel the family as a whole could be helped a great deal by an experienced probation officer or social worker.'

(Dr. A reporting on a client of Probation Officer 14)

From personal experience (confirmed by interviews with probation officers), it was evident that Dr. A had, over the years, enraged generations of probation officers by persistently claiming expertise in assessing suitability for probation.¹

Dr. D assured me that his relationship with probation officers was very much 'a team matter':

'I would never make a recommendation for probation without talking to the probation officer - I would never make a recommendation against the probation officer's view - it's quite inappropriate.'

(31)

Nevertheless, one probation officer recounted with delight an incident in which Dr. D had done precisely that and had been challenged by a magistrate:

'He had suggested probation with a condition of psychiatric treatment. The stipendiary magistrate - bless his cotton socks! - had said, "That's all very well, Dr. D, but shall we let Probation have a look at it?".'

(Probation Officer 21: 156)

The extent to which probation should be advocated strategically for women, on the grounds of 'sheer humanitarianism', is explored in Chapter Seven. Here, the task has been to demonstrate the power of psychiatry to intrude into a discourse which is not its own (namely, the discourse

of social work) and to appropriate in the name of 'consultancy' both the paradigms of social, rather than medical, neediness and the personnel of social work. The following remarks by Dr. A illustrate the extent to which probation officers are viewed by psychiatrists as providing a service for the benefit of psychiatry:

'Basically, I would have said that going into the Probation Service is not something that is very prestigious, on the one hand, or likely to make your fortune, on the other. And therefore I would have thought that 9 out of 10 probation officers are into this because they want to help and are enthusiastic. In the main, they are very co-operative - I find them very helpful people to deal with. Just occasionally, I find that the information they come up with is a little thin but then some of them have enormous caseloads and not much time to do it....By and large, I am struck by the frequency with which they come to the same conclusion as mine, quite independently.'

(17-18)

Magistrates and probation officers often interpret this congruity of conclusion as being more indicative of a lack of expertise on the part of psychiatrists than of any unexpected medical expertise on the part of probation officers! Nevertheless, psychiatrists arrogate to themselves the right to assess defendants and view probation officers' 'knowledge' in this area as being inferior in the sense that it exists to reinforce the Imaginary of psychiatric discourse. When it comes to treatment, however, probation officers find that their expertise is elevated and afforded greater respect.

The second consequence of psychiatric oversight is that psychiatrists appear to defer to probation officers' greater expertise in the management of the mentally disordered.

There is evidence (Gibbens, Soothill and Pope, 1977) that, once psychiatrists have made their assessments, they are not conspicuously enthusiastic about carrying out their recommendations, especially if, as in recommendations for probation orders with conditions of treatment,

these are supposed to involve joint work with probation officers.

Psychiatrists show a reluctance to become over-involved in 'court order' cases because, as Lewis (1980: 26) observes, 'the notion of "enforced compliance" upsets some psychiatrists':

'I am often reluctant to treat people who are subject to court orders as I feel that for the patient to benefit he has to be committed to his treatment....I have not noticed any difference between men and women with regard to this.'

(Dr. E - written response)

'Most patients on court orders I see only once in 2 or 3 months - and I stand by for emergencies. I think the probation officer does most of the work - I just support and monitor progress.'

(Dr. F)

In Kathy's case, Dr. A apparently felt under no obligation to see a woman convicted of manslaughter at all, even though he had given an undertaking to a Crown Court that he would see her. Kathy killed her sister and was convicted of manslaughter on the grounds of diminished responsibility, having been remanded in custody and given an EEG test, the results of which were abnormal. The prison doctor had felt that this required further investigation and treatment and, at court, Dr. A had agreed to see Kathy as an out-patient. Directly as a result of this undertaking, the judge embarked on the 'exceptional course' of placing her on probation. She was never seen by Dr. A. Once Kathy had been rendered harmless by psychiatric assessment (Allen, 1987), treatment was presumably unnecessary and she could be left safely in the hands of the Probation Service.

There seems to be an assumption that once a probation order has been made most of the 'real' work will be done by the probation officer, to the degree that psychiatrists seem to adopt a fairly cavalier attitude about even informing probation officers that they are no longer treating

a patient/client. In the light of the following remarks, it is perhaps not surprising that it took Kathy's probation officer two years to realise that she had never been seen by Dr. A:

AW: 'And if you were considering discharging a patient, would you automatically contact the probation officer, or would you expect them to contact you for that kind of information - or for progress reports?

Dr. A: 'It would depend. Sometimes they write with a progress report and ask "what do you think?" but the commoner sequence of events is that if I'm treating somebody, whether or not they are subject to supervision, then the GP gets a discharge letter and one aims to send a copy to the social worker for the area or the probation officer, so they are informed.'

(18)

This would seem to confirm Lewis' findings (1980) that there exists considerable disagreement about the respective roles of the psychiatrist and the probation officer.

It is by no means self-evident that probation officers would welcome greater involvement by psychiatrists. Dr. B's attempts to demystify his role as consultant to a hostel catering for women on probation had met with a mixed reception. Initially, he had attempted to act as a consultant for the hostel staff, rather than as a specialist for dealing with difficult residents:

'I got to know the staff there quite well and the work I did with them was not with the clients they had resident, but with the staff and the way the staff related with the clients, and I really ran psychotherapy enabling the probation officers there to work with the clients rather than seeing the clients myself as a specialist. But that changed about two years ago when the girl in charge left and a new warden took over. Her perception of a consultant is not so much someone that you consult with about your work but who is a specialist who treats people who, for one reason or another, are showing difficulties.'

(19-20)

An interview with the 'new' warden confirmed that she did not view the running of psychotherapy groups for hostel staff as 'consultancy' but rather as an unjustified imperial expansion. She did not accept Dr. B's claim that:

'All I do is to try and encourage individual therapists, whether they are nurses, domestics, secretaries, doctors, whoever, to use whatever personal skills they have in their personality to try and teach patients that they can get on with other people.'

(28)

She saw his interventions as intrusions into social work discourse. Far from seeing Dr. B as acknowledging their expertise, the warden saw him as attempting to turn her staff into patients themselves! He was seen to have laid claim illegitimately to a competing field of expertise - that of social work.

Conclusion

In this chapter it has been argued that forensic psychiatrists make a unique contribution to the 'chain of signification' of female lawbreakers by constructing them as treatable (or not) not only within psychiatric discourse, but also within social work and penal discourse. The origin of psychiatrists' transferable authority rests on their paradoxical relationship with other courtroom personnel. The legally defined powers of psychiatrists to assess, judge and manage lawbreakers are wide-ranging but entirely discretionary. The invocation of these powers is dependent on the extent to which psychiatrists and other personnel are prepared to enter into a descriptive and prescriptive collusion in relation to the organisation of the difference which constitutes the 'culpable/not culpable' and 'treatment/punishment' distinctions.

It has been argued that the women in this study have been muted by psychiatrists because they have been subject to a formal psychiatry which

purports to be essentially gender-neutral but which they have experienced as being substantively discriminatory. The gap between the ideological claims (Imaginary) of psychiatric discourse and the range of unlegitimated interpretations of the women's behaviour (Other) which they seek to contain (Symbolic) is foreclosed in a number of ways.

1. By invoking the female domination of the official statistics of mental illness to demonstrate that even 'normal' women are prone to mental instability, those women who deviate from normal gender expectations by breaking the law are viewed as doubly prone to such instability.

2. By invoking a clinical paradigm of mental illness most psychiatrists are committed to the use of restricted and rigid categories of diagnosis which are frequently experienced as incongruent with the lived realities of these women. Alternative paradigms which construct mental illness as the product of unresolved internal conflict (psycho-analysis) and/or problems of living (anti-psychiatry) are largely ejected from the site of assessment because they represent the Other which threatens to re-open the gap between the Imaginary and the Symbolic.

3. By invoking and then turning on its head the notion of 'treatability', psychiatrists claim authority to redefine evidence of sickness in these women as evidence of neediness. This is demonstrated in two particular ways. Firstly, those who deviate from 'normal' femininity are constructed as having personality disorders rather than being 'really' mentally ill. Secondly, those who suffer gynaecologically based disorders are redefined as being 'just' subject to a particular form of stress (which is itself deemed to be gender-neutral).

Consequently, nondescript women fall both within and without the domain of psychiatry. Psychiatrists retain their authority to assess and judge them but, by redefining their 'sickness' as neediness, they

simultaneously deny responsibility for treating them. Despite this, they retain their oversight of those social workers and probation officers whom they then charge with the women's 'treatment'. The next chapter explores the consequences for probation officers of the 'helpful collusion' entered into by psychiatrists, solicitors and magistrates, which so frequently results in nondescript women ending up on probation.

CHAPTER SEVEN

PROBATION OFFICERS: EXPERTS IN WORKING STRATEGICALLY

Introduction

'Psychiatrists have never said that she's strictly a mental case. They'd say "severe personality problems, who'd benefit from the attention of an experienced probation officer"....I think the Service is trying to carry her as much as they can....and trying to, you know, keep the worst of the courts' powers away from her.'

(Probation Officer 1: 141-2 - male,
emphasis added)

'She didn't need psychiatric treatment in my opinion. I went along with it because I hadn't been in the Service very long and I didn't have the confidence to challenge the psychiatrist - I'm not sure how I'd go about that even now. What I would really have liked to have done was to write back to the stipendary magistrate and say, "I don't agree - I don't think this woman needs probation...." but I didn't! Even the stipendary magistrate, when he summed up, made some remark that he didn't go along with the mental problem, but that out of sheer humanitarianism he would go along with the probation order. But there was nothing to do in that order.'

(Probation Officer 2: 157 - female,
emphasis added)

In Chapter Six, it was argued that the psychiatric assessment of female lawbreakers is less dependent on the clinical identification of medical symptoms than on moral judgments about a woman's ability to 'cope', indications of which are sought through an examination of her domestic situation, her sexuality and her class position. It was further argued that psychiatrists are subject to a discourse which legitimates them as 'wise men', with authority and expertise which is transferable from psychiatric discourse to criminological, penal and social work discourses. These two characteristics of psychiatry work together to ensure that women who break the law and who are psychiatrically assessed

end up on probation if they are muted or in prison if they are more overtly troublesome (Carlen, 1983) - but rarely in hospital.

This chapter takes up the themes of Chapter Three, which deconstructed the accounts given of themselves by fifteen women and their probation officers. It demonstrates that most probation officers have 'nondescript' women on their caseloads and experience exasperation at their elusiveness, their demands and their 'deceptiveness' as well as the rewards of helping them find 'ways round' the gender contract. In sum, it argues that probation officers experience the frustration of working within a discourse which circumscribes their authority to define, and restricts their responses to, these women. When to that discourse is added the frustration of working with resources perceived to be inadequate, psychiatrists perceived to be uninterested and social workers perceived to be morally judgmental, probation officers are frequently left feeling that such intervention as is authorised within probation discourse is both contradictory and, ultimately, ineffective. In this chapter therefore, it is argued that:

Probation Officers' discourse is constituted, on the one hand, by the competing discourses of magistrates, solicitors and psychiatrists who, having failed to describe these women adequately within their own discourses, so often reach consensus about the competency of probation officers to describe them. On the other hand, probation officers' discourse is constituted within social work ideology, which requires and authorises them both to care for and control women as key figures in the maintenance of the nuclear family (whether or not the women are, in fact, members of such families).

Chapter Three outlined the discourses of domesticity, sexuality and pathology within which the femininity of the women in this study is constructed. The extent to which the women were able to exploit the contradictions of those discourses was examined and the implications for their relationships with their probation officers of that discursively circumscribed struggle hinted at. Most probation officers feel that some of these women 'should not be on probation' but most accept that, in the absence of an alternative discourse which might enable them to be described accurately (that is, as severely socially disadvantaged and with a legitimate claim to adequate financial provision and accommodation), the role of the probation officer as a supportive listener and advice-giver is the best available, and not an inappropriate one. On the grounds of 'sheer humanitarianism', most probation officers do not ultimately object to 'carrying' their 'nondescript' female lawbreakers.

This chapter analyses information obtained from interviews with 29 probation officers, most of which were tape-recorded and may be examined in transcription in Volume 2 of this thesis. The material is here analysed under the following headings:

The Origin of Probation Officers' Authority.

The Rules Governing Probation Officers' Discourse: The Ideological and Material Pre-conditions of 'Alternatives to Custody'.

Gender-Neutral Probation? The Management of Material Inequality and Discursive Contradiction.

The Logic of Working Strategically: Identifying the Contradictory Effects of the Gender Contract.

The Practice of Working Strategically.

The Origin of Probation Officers' Authority

Probation Orders

'Probation officers are required to supervise and to "advise, assist and befriend" the offenders placed under their care by the courts, and.... the success of supervision turns on the ability of the individual probation officer first to gain the offender's confidence and then to work with him (sic) to overcome some of the problems which may have given rise to the offence.'

(Home Office, 1986c: 31)

A court may make a probation order for between six months and three years on any adult defendant if it considers that it is 'expedient to do so' and with the defendant's consent. Consent implies a willingness to 'co-operate with his (sic) supervising probation officer as regards reporting, receiving visits and heeding the advice given to him' (Home Office, 1986: 31). Legally, the probation order retains its status as a measure to be used at the court's discretion 'instead of sentencing', although it has been possible, since the 1982 Criminal Justice Act, to appeal against the making of an order. Officially, however, the probation order 'stands outside the normal tariff' (Home Office, 1986c: 32). According to Millard (1982), the probation order is (and should continue to be) the mechanism whereby courts can institutionalise their ambivalence (and, by implication, the ambivalence of the community) towards certain offenders. It allows a court to say to a defendant:

"We are uncertain about what you deserve and what you need. Although we cannot be completely merciful with you, we do think you need some kind of help."

(Millard, 1982: 291)

In a 'morally pluralistic' society, Millard argues, where 'no-one is sure any more who ought to be punished and who ought to be helped', the probation order represents an attempt to manage the 'built-in unresolvable tension between the need for repression on the one hand and a commitment

to mercy on the other' (1982: 291). The consequences of this tension for probation officers are examined in the next section of this chapter.

Additionally to the basic conditions of a probation order, courts have the power to include requirements of medical treatment (see Chapter Six), residence (normally at an Approved Probation Hostel) or attendance at a Day Centre, the purpose of the latter being 'to divert people on probation from a pattern of re-offending by involvement in practical and positive tasks under the supervision of probation staff' (Home Office, 1986c: 35). Finally, since 1982, the court has also had the power to include a 'negative requirement' that an offender refrain from a specified activity for a certain period. Strong opposition from the Probation Service, on both moral and practical grounds, has meant that such powers have been rarely used and it has now been acknowledged officially that probation is not 'designed to provide a framework for the imposition of predominantly coercive requirements: its primary aim is to develop an individual's capacity for self-control' (Home Office, 1986c: 35).

In 1983, approximately 38,000 probation orders were made in England and Wales (Home Office, 1986c) and over 80% were completed successfully (that is, ran to full course without further conviction, discharged early for good progress or discharged early by the substitution of a conditional discharge). In the remainder of orders, offenders were 'breached' (that is, returned to court) as a result of either committing further offences or failing to comply with the requirements of the order. Only about 3-4% of orders are 'breached' for the latter reason and the reluctance of probation officers to engage in such proceedings is generally attributed to the lack of interest shown by courts and the counter-productiveness of the exercise in terms of the officer's relationship with his/her client. Kirwin (1985) argues that clients are

normally only breached if they have actually 'disappeared without trace fairly early in the order', in which case the officer needs to cover him/herself. Lawson (1978), on the other hand, argues that breach proceedings seem to be used productively by experienced male officers in cases of non-reporting and unnotified change of address with the effect of restoring the credibility of the probation order (by which is presumably meant its authority and controlling influence) and improving the client's response to it. Having been 'breached', an offender may be fined or given an Attendance Centre order (in which cases the probation order may be allowed to continue) or, alternatively, s/he may be sentenced for the original offence in some other way.

Since the mid- 1970s there have been marked changes in the statistical characteristics of the 'typical' probation order. From 1972 to 1979 there was a dramatic decline in the use of probation orders by courts (from 33,000 to 27,000), followed by a steady increase to 40,000 in 1984 (Home Office, 1986b). Although half of those orders have always been made for offences of theft and handling, there has been an increase in the numbers of orders made for offences of burglary and violence. There has been a steady increase in the number of previous convictions held and custodial sentences experienced by those placed on probation. Perhaps the most dramatic change has been in the length of probation orders, as indicated in Table 7.1:

TABLE 7.1:
LENGTH OF PROBATION ORDERS (%)

	1972	1978	1984
3 years	25		4
2 years	64		56
1 year	11		34
6 months (introduced 1978)		2	6

(Source: Home Office, 1986b)

The official picture of the probation order, therefore, is of a measure which is being used:

- a) increasingly by the courts;
- b) for more serious offences;
- c) for offenders with more previous convictions;
- d) for shorter periods of time, and
- e) as one of closer surveillance.

In other words, the probation order has developed from being an alternative to sentencing to being an 'alternative to custody'. The implications of the 'alternatives to custody' discourse for probation practice, particularly in relation to female lawbreakers, are examined in the next section of this chapter. One of the layers in the foundation of that discourse, however, was the introduction in 1972 of Community Service orders and this section concludes with the official account of this provision, which served to reinforce the changing nature of probation discourse in the 1970s and 1980s.

Community Service Orders

A court may impose a Community Service order of between 40 and 240 hours, to be completed within 12 months, on any consenting offender over the age of 16 years, for whom suitable work is available. By requiring the offender to 'perform unpaid work on behalf of the community' (Home Office 1986c: 41), such orders are seen primarily as a means of

- a) depriving an offender of some liberty - in the form of his/her time,
- and b) exacting some reparation (albeit indirectly) for the harm presumed to have been done to the community by the offender. The measure was initially intended to be a direct 'alternative to custody' (that is, based on an assumption that it is possible to assess by some objective criteria that some offenders, if undiverted, will go to prison).

The involvement of the Probation Service in such orders, however, made it inevitable that 'through subsequent custom and practice, the order has come to be regarded as a sentence in its own right' (Home Office, 1986c: 41). The inevitability of this process was due to the ineluctable commitment of traditional probation discourse to the rehabilitation of the offender through the personal influence of the probation officer, which made it difficult for officers to adapt to a role which might be concerned exclusively with the provision and supervision of work. If, as Millard (1982) suggests, this commitment is reinforced by the courts' views of probation officers as people who permit them to be uncertain, it is perhaps not surprising that the Community Service order has become almost as versatile a sentencing option as the probation order.

In 1983, nearly as many Community Service orders were made (35,000) as probation orders and a similar number (5,500) were subject to 'breach' proceedings. Of these, approximately half were dealt with by immediate imprisonment, most of the remaining offenders being fined and ordered to continue their original order.

This section has established the legal origin of probation officers' authority. The construction of that authority within probation discourse is now examined and the rules governing that discourse extrapolated.

The Rules Governing Probation Officers' Discourse: The Ideological and Material Pre-conditions of 'Alternatives to Custody'

'Working as a probation officer is a funny way to make a living. The job involves struggling to solve problems with no apparent solution and trying to reconcile conflicting interests.... When confronted with the range and seriousness of the social and economic problems affecting their clients, probation officers often feel powerless and ineffectual.'

(Walker and Beaumont, 1981: 1)

The juxtapositioning of 'official' and 'practice' accounts of probation officers' work was perhaps the most significant contribution to the process of knowing about the Probation Service made by Walker and Beaumont's socialist critique of it (1981). By adopting this methodology, they highlighted the 'dissonance' experienced by probation officers as a result of 'the simultaneous containment of objectives which are to some degree in conflict' (Harris, 1980). Harris argues that probation officers experience three kinds of dissonance in their work:

a) moral dissonance, resulting from conflicting ideologies about the purpose of probation;

b) technical dissonance, resulting from discouraging empirical evidence about the effectiveness of probation in reducing criminal behaviour, and

c) operational dissonance, resulting from tension inherent in managing the 'care and control' aspects of the daily probation task.

Moral dissonance

'The fundamental aim of probation is to uphold the law and protect society by the probation service working with the offender to improve his (sic) behaviour.'

(Home Office, 1986c: 31)

'A fundamental conclusion of our analysis is that probation officers are paid to do a particular job for the state and that this role is generally supportive of capitalism.'

(Walker and Beaumont, 1981: 160)

Probation discourse, in common with other social work discourses, has been forced to accommodate attacks on the 'rehabilitative ideal' from critics of both the political right and left. On the one hand, loss of confidence in the treatment approach to deviance control (e.g. Allen, 1959), coupled with the rising influence of interactionist and Marxist

theories has increased scepticism about the justification for executive discretion and led to a call for a return to 'fairer' tariff-based sentencing. On the other, the ideology of the 'new right' has sought to buttress individualism, familialism and nationalism by encouraging the stigmatisation of 'outgroups' and emphasising the need for social discipline (Walker and Beaumont, 1985). The resulting experience of dissonance by probation officers has been due in part to the juxtapositioning of three contradictory discursive elements:

- a) the reconstruction and dismissal of 'treatment' as little more than 'compulsory persuasion' (Raynor, 1978);
- b) the fear that intervention - in whatever form - by 'helping' agencies may serve to amplify and exacerbate a deviant's problems rather than ameliorate them, and
- c) the apparent desire of 'common sense', hailed by the 'new right', to see offenders more strictly supervised and called to account.

Technical dissonance

Martinson (1974) concludes that empirical evidence 'gives us very little reason to hope that we have in fact found a sure way of reducing recidivism through rehabilitation'. Two now infamous studies of the mid-1970s served to confirm the doubts of many probation officers about the efficacy of probation in relation to reconviction rates. Phillpotts and Lancucki (1979) concluded that first offenders placed on probation were more likely to be reconvicted than if they had been dealt with in some other way and that young adults (17-21 year olds) on probation had higher than average reconviction rates, regardless of their previous records. Whilst the former finding could be taken to support either deviancy amplification theory or a more common sense interpretation that first offenders selected for probation are likely to be those about whom

courts feel pessimistic anyway, the latter conclusion was more unambiguously discouraging for probation discourse. Even more discouraging were the results of the IMPACT experiment (Folkard et al., 1976) which compared the responses of probationers allocated to low intensive case-loads with a control group given normal supervision. The final report concluded that there was little overall difference between the two groups in terms of reconviction rates; if anything, the control group did slightly better. This analysis overlooked the fact that certain types of offenders did do better under intensive supervision in relation to other 'social' criteria (that is, in relation to problems seen as more amenable to social work intervention). This was particularly true where the probationer had been able to identify his or her own problems and was well-motivated towards change. The tautology of this justification for supervision is, however, obvious. Probation officers appear to be good at the things which they choose to define as the things at which it is important to be good!

Operational dissonance

It has been argued that probation discourse has traditionally managed the tension between the caring and controlling aspects of the daily probation task by invoking the 'family metaphor'. The probation officer is constructed as a 'firm but kindly uncle (sic), giving the errant child the benefit of a long experience of life and so putting him (sic) on the right road' (Harris, 1980: 172). More recently, probation discourse has attempted to construct several different paradigms of probation which might enable probation officers to 'make sense' of the lived reality of their ideological and material conditions of existence. These models may be summarised as follows:

1. Controlism. Rooted in a positivistic belief in the possibility of identifying objectively those offenders who are 'destined' for custody, this model accepts as legitimate the role of the Probation Service in making provision for the disciplined containment of such offenders in the community. Evidence of this model includes:

- the (unimplemented) recommendation of the Younger Report (1974) to give probation officers the power to detain offenders for 72 hours if they seemed likely to commit a further offence;

- the introduction in 1972 of Community Service and Day Training Centres;

- the Kent Control Unit, which has been described as a 'non-residential prison' (Raynor, 1985: 48);

- the concern of the 1982 Criminal Justice Act to remedy, through its Schedule 11 provisions, the legal loophole exposed in the Rogers v. Cullen case which held that attendance at a Day Centre (as opposed to a Day Training Centre) could not be regarded as a breachable condition of a probation order;

- the production in 1984 by the Home Office of its 'Statement of National Objectives and Priorities' for the Probation Service, the first objective being stated as the provision of realistic alternatives in the community for those offenders most likely to be imprisoned.

2. Socialism. At the other extreme is the model advocated by Walker and Beaumont (1981, 1985) which is characterised by 'oppositional and defensive' work and 'non-oppressive' help. In an effort to challenge those features of society which serve to disadvantage clients of the Service, probation officers are exhorted:

- not to communicate capitalist ideology to clients, for example, not to nag the unemployed, nor to confirm sexist and racist stereotyping either of or by clients;

- through union activity (NAP0) and in cooperation with other state employees, to resist changes within the agency and society which put resources into policies that restrict client choice.

Officers in sympathy with this model find themselves opposing many of the coercive provisions of recent legislation, though some would justify cooperating with their implementation as a means of exposing the role of the Probation Service as an Ideological State Apparatus (Althusser 1971). The challenge of socialism has undoubtedly been one of the most significant features of the development of NAP0 since the mid-1970s and the following remark by Nigel Walker (1985: 288) is indicative of the way in which traditional probation discourse has felt obliged to accommodate the Other of 'socialist practice':

'Many probation officers, however, who believe in socialist probation practice are also genuinely committed to helping their clients.'

(emphases added)

3. Separatism. Two versions of this model exist.

In the first, it is argued (Harris, 1977; 1980) that, since probation officers appear to be good at social work but ineffective as crime-reducers, they should concentrate on the former, offering a 'court-based social work service' distinct from any schemes of community-based punishment, which would be someone else's responsibility. In the second, it is argued (Bryant et al., 1978) that, whilst probation officers can fulfil both care and control functions, these should be clearly delineated and there should be an emphasis on client choice. The control function is executed by the use of reporting 'pools' and clients have a choice about receiving any further help. This second version has been implemented in many Probation areas with varying degrees of reported success.

4. Occasionalism. It might be argued that most probation officers do not bring to their work so conservative a perspective as that of 'controlism' nor so radical a perspective as that of 'socialism', nor yet so obsessive a need for clarity as that implied in the 'separation' model. Nigel Walker (1985) argues that probation discourse is based on what might be termed 'occasionalism', by which is meant that probation officers use the occasion of a person's conviction as an opportunity for looking after his or her welfare. Within probation discourse this approach has become known as the 'non-treatment' paradigm, following Bottoms and McWilliams' (1979) call for the abandonment of the medical model of probation. They suggested the substitution of the vocabulary of 'help' for the vocabulary of 'treatment', so that, for example:

DIAGNOSIS becomes SHARED ASSESSMENT and

NEEDS (defined by probation officer) become TASKS (collaboratively agreed).

The emphasis in work with offenders is laid on negotiation, responsibility and informed choice. The power differential between worker and client is deliberately played down and faith is placed in the compelling logic of rational argument to influence both court and client. Clearly, since the offender is held responsible for his actions, he may have to face the fact that his choices are limited and that the nature of his freedom may have to be negotiated with the court. But within this model, such limitations are compatible with the offer of realistic help rather than so-called treatment by experts.

This model has become very popular in probation discourse for two reasons. Firstly, it seems to offer some resolution of the problem of dissonance stemming from probation officers' need to make sense of their work in an increasingly punitive criminal justice system. Secondly, it is compatible with what, in practice, many probation officers feel they

have always done anyway. The image of probation as pseudo-medical treatment has always been more powerful in theory than in practice. Kirwin's (1985) modest account of what probation officers actually do illustrates the point, and the 'non-treatment' paradigm provides justification in the eyes of many for continuing such practice.

The consequences of dissonance: Working Strategically

'We should eschew the phrase "alternatives to custody" for that acts subliminally to suggest that custody is the real answer and produces an expectation that we will supply a kind of custody in the community.'

(Lacey, 1984)

As a result of the discourse of 'Alternatives to Custody', probation officers are trapped not only within the competing judicial discourses of magistrates, solicitors and psychiatrists but also by competing interests within their own professional discourse. Probation officers are constantly faced with the dual dilemma of defining the appropriate 'moment of intervention' and defining the appropriate 'nature of intervention' in relation to any given potential client. That decision is always made as a result of a professional assessment of the relationship between client need, agency resources and client motivation (that is, the extent to which the client's expressed desire to change is judged by the probation officer to be 'genuine' and the extent to which s/he is judged to have the capacity to benefit from the help available). That assessment must then be translated into language which is 'acceptable' to the court. The defendant must be represented in a form which is recognisable by solicitors, psychiatrists and, above all, magistrates. The medium, or 'programme' (see Chapter One) through which this is done is the Social Inquiry Report.

Traditionally, probation officers have claimed authority for SIRs

on the grounds that they contain recommendations of 'expertly selected treatment based on scientific diagnosis' (Raynor, 1985). Nowadays, however, probation officers are more modest in their claims:

'Any opinion expressed in the report about the appropriateness of some form of contractual sentencing....should be offered to the court as a plausible alternative to the retributive tariff sentence....The important issues are what the offender is prepared to do, whether and how far the social work agency is able to help him do it, and what assurances the court will require from both parties.'

(Raynor, 1985: 153)

The consequences of the dissonance created by the discourse of 'Alternatives to Custody' is that probation officers have been forced, as they see it, to work strategically. In other words, they believe that, in order to get the 'best deal' for their clients in an imperfect judicial world, they may have to compromise, or indeed sacrifice totally, their higher principles of justice and equality. Consequently, their authority becomes governed by the following rules:

1. The requirement simultaneously to recognise (in order to claim authoritative understanding of the offender) and deny (in order to make 'realistic' recommendations to the court) the conditions of social and economic disadvantage in which many offenders exist.
2. The requirement simultaneously to intervene (in order to prevent recidivism) and not to intervene (in order to prevent recidivism);
3. The requirement simultaneously to care for the offender (implying an attempt to increase his/her choices in the interests of personal growth) and to control the offender (implying the restriction of choice for the protection of society).

The implications of these rules for female lawbreakers are now examined.

Gender-Neutral Probation? The Management of Material Inequality
and Discursive Contradiction

Women on Probation and Community Service Orders

The official penal profiles of men and women placed on probation and Community Service orders differ markedly, as can be seen from Table 7.2:

TABLE 7.2:
CHARACTERISTICS OF PROBATION AND COMMUNITY
SERVICE ORDERS ON MEN AND WOMEN, 1983

Probation Orders	Men (%)	Women (%)
Orders made	71	29
Previous custodial experience	32	9
No previous convictions	17	34
 Community Service Orders		
Orders made	95	5
Previous custodial experience	42	19
No previous convictions	11	21

(Source: Home Office, 1986c)

In relation to the official crime rate for women, which is 15-20% of the overall crime rate, the following tentative conclusions might be drawn from the above table:

Female lawbreakers appear to be

- a) over-represented on probation and under-represented on Community Service Orders;
- b) placed on both probation and community service at an earlier stage in their criminal 'careers' than men.

Each of these statements might be interpreted in a number of ways and

the particular explanation selected by the various discourses which attempt to describe female lawbreakers has its own contradictory implications for defining the 'moment' and nature of probation intervention in the lives of nondescript women.

This study was carried out in 1983, before the Home Office produced its Statement of National Objectives and Priorities for the Probation Service (1984). The purpose of this document was to encourage the Probation Service to toughen its image and set its sights firmly on providing 'alternatives to custody' for those 'high risk' offenders who, by reason of the nature or extent of their criminal behaviour, were in danger of imprisonment. One implied consequence of this attempt to redefine the 'appropriate' probation client was the rendering 'inappropriate' of a large number of female lawbreakers, whose offences were generally trivial, 'one-off' affairs (Eaton, 1986) - the women who were traditionally put on probation, according to one probation officer:

'....because the magistrates don't know what to do....Most of the women I've got are very low key - there's not much there to do....They wouldn't have gone to prison. Most of them are first offenders - and very minor offences.'

(Probation Officer 3: 171, 173 - female)

As a result of SNOP, the 1982 Criminal Justice Act and the subsequent policy reviews undertaken by most Probation Services (Statements of Local Objectives and Priorities or SLOP), one would have expected a reduction in the numbers of women being placed on probation and an increase in the numbers of their previous convictions. The 'Probation Statistics, England and Wales, 1984' (Home Office, 1986b) indicate that the numbers of women placed on probation have indeed declined - from 11,660 in 1982 (32% of all probation orders) to 10,990 in 1984 (27% of all probation orders). Statistics of previous convictions are less easy

to interpret, since annual figures for women alone are not consistently available. There is clear evidence that the percentage of all offenders on probation with no previous convictions has declined (22 in 1982, 19 in 1984) and that the percentage with previous custodial sentences has increased (23 in 1982, 27 in 1984), lending weight to the argument that probation is moving steadily 'up tariff' as a penal disposal. The percentage of male offenders on probation with no previous convictions was lower (15%) in 1984 than the overall figure and the percentage with previous custodial sentences higher (34%). One can, therefore, deduce that, whilst more women with fewer previous convictions than men are being placed on probation, the pattern may be changing. Statistics of geographical variations are also available, although, again, not in relation to women alone. It would appear, for example, that in Staffordshire (the area where this study was undertaken) more offenders with no criminal records (29% of all orders in 1982, 24% in 1984) are placed on probation than is the national average, whilst fewer with previous custodial sentences (24% in 1984) are placed on probation. In Greater Manchester (where I currently work), however, the reverse is true, the figures being 14% and 25% respectively in 1982, 13% and 36% in 1984.

The conclusion that may be drawn from these figures is that, whilst the penal profiles of the women in this study, who were placed on probation in 1983 in Staffordshire, may not have been representative of the penal profiles of all women placed on probation in Staffordshire at that time, they are likely to have become increasingly representative of women placed on probation since that time and in other areas of the country. The stereotypical descriptions of women who are placed on probation as being middle-aged, middle-class and menopausal have only ever been accurate in relation to a tiny proportion of female probation

clients. However, it is becoming increasingly apparent that, as with men, the majority of the female lawbreakers who are processed into 'criminal women' are young (the proportion of older women placed on probation is slowly declining), poor and with a history of deviant, if not specifically delinquent, behaviour (Carlen, 1987).

A caseload survey which I helped to undertake in a probation office in Greater Manchester in 1986 appears to confirm this. The survey compared the profiles of women on probation in 1986 with those on probation in 1981. In 1981, of 42 women on probation, 18 had no previous convictions. Although the number of women on probation in 1986 was similar (49), only 11 had no previous convictions and 20 had four or more previous convictions (compared with 13 in 1981). In both years, the majority of women on probation were under 30 years old and over 50% were under 25 years old.

Whilst the officers involved in the survey felt able to congratulate themselves on moving successfully 'up tariff' in relation to women, in accordance with the spirit of the 1982 Act, SNOP and SLOP, two nagging concerns remained for them:

1. In the absence of suitable alternative provision what will happen to those women 'in need', for whom single, trivial acts of offending represent their only available means of entry into the world of welfare provision?

2. If such material and/or emotional need remains unmet, is there a very real danger that the first-time female lawbreaker will become a recidivist? On reading the results of the previously mentioned survey, one woman officer commented drily, 'I bet they are the same women five years on'! In other words, she was implying that, whilst probation officers might appear on paper to be making more efficient use of their limited resources, they may simply be working less effectively and

making less impression on their clients than ever.

The 'Alternatives to Custody' debate has been constructed within probation discourse in such a way as to ensure that it both ignores and is irrelevant to female lawbreakers. This is not because women are not sent to prison; clearly, they are - and in increasing numbers (Home Office, 1986c). But the current debate ignores the complexity of the route that leads them there. It does this in two ways. Firstly, it renders the majority of female lawbreakers invisible by constructing them as 'not recidivists'. Secondly, it renders a minority of female lawbreakers highly visible by assuming that their presence in prison demonstrates either their dangerousness or their incorrigibility, rather than demonstrating the inadequacy of the discourses within which they are so constructed. This study demonstrates that increasing numbers of female lawbreakers are trapped by a judicial need to fit them into one or other of these categories.

As has been seen, the 'programme' through which probation officers assess or categorise defendants in ways which are recognisable to courts is the Social Inquiry Report. Although this study has not specifically examined reports on women, it has sought to offer an analysis of the discourses within which they - and psychiatric reports - are authorised, written and received (that is, read, and acted upon or rejected). It has been argued that female lawbreakers are rendered 'programmable' (that is, presented as in need of, motivated towards and capable of benefitting from the resources of the Probation Service) through their construction within the discourses of domesticity, sexuality and pathology. The trap for probation officers who might want to construct female lawbreakers within alternative discourses (such as the Women in NAPO group in Manchester, who experimented with the inclusion of a standard paragraph on women's poverty in reports on

prostitutes)⁽¹⁾ is that, in an arena where such stereotypes dominate, they run the risk of seriously disadvantaging their client. Hence many officers justify their continued writing of gender-stereotyped reports on the grounds that they are working strategically in their clients' best interests.

But strategic working does not end in the courtroom. This chapter continues by examining the consequences of this 'dissonance trap' for probation officers in their daily work with the 'nondescript' women who are so frequently placed under their supervision. It is argued that, in relation to such women, probation discourse is characterised by:

1. recognition of the contradictory effects of the 'gender contract' - the ideological and material conditions within which many women clients are located;

2. a sense of frustration/powerlessness, provoked by:

- a) the apparently self-destructive contract avoidance behaviour of some women clients and

- b) the apparent indifference of professionals, officials and politicians who are perceived to have the power (that is, the authority plus the expertise knowledge plus the material resources) to bring about effective change in the lives of these women;

3. an occasional sense of achievement when:

- a) in the absence of an alternative discourse within which to work, the contradictions of the gender contract are exploited (in probation discourse termed 'working strategically') to the benefit of some women clients (though, inevitably, to the detriment of others?) or

- b) some women are enabled to find non-self-destructive 'ways round' the gender contract.

The Logic of Working Strategically: Identifying the Contradictory Effects of the 'Gender Contract'

The starting point of this analysis is a comment made by a male probation officer working in a women's prison. He was asked whether he agreed with the view of a previously interviewed female probation officer that women evade reality more than men and that prison helps them to face up to the consequences of their behaviour. He replied:

'For some women, reality is provision for their families. I have found that women in prison are on the whole more realistic than men....and perhaps they suffer more from the fact that they are rooted in relationships.'

(Probation Officer 4: 182 - male -
emphasis added)

Who does and does not have the authority to define what constitutes 'reality' for female lawbreakers is one of the central questions which has to be addressed by any analysis of the gender contract. Magistrates, solicitors, psychiatrists and probation officers claim to have such authority but the women themselves are muted and their definitions of reality subjugated. Being 'rooted' might be translated in authorised discourses as being securely surrounded by conditions conducive to growth but in the womens' discourse as being immovably transfixed in a position of some danger (as in 'rooted to the spot').

Most probation officers recognised that many of the women had committed crimes because they were 'desperate' for money (Probation Officer 5: 183 on Pauline) and that they could be viewed as 'not really criminal when it comes to the point - not to that extent' (Probation Officer 6: 204 on Eileen). But the relationship between poverty and criminal activity was often more complex than that and this gave rise to attitudes of wariness on the part of would-be sympathisers. Probation Officer 7 explained what happened to Jean on her release from her prison sentence for baby-snatching:

'She'd been given a house....by the Housing Department - that had been arranged by the Social Services - and she shoplifted. She shoplifted a baby bath, would you believe, and maternity clothes and a number of other things. The policewoman was very, very sympathetic, until she got back to the house and realised how much other stuff she'd got, which was probably also shoplifted, and I can tell you, I wasn't very nice to her (i.e. to Jean).'

(217)

Deprived of her own family and punished for snatching someone else's (see Chapter Three), Jean had resorted to 'providing' for her next baby, which she knew was likely to be removed from her at birth. Initially the object of official sympathy, she rapidly became the object of official anger when the extent of her 'provision' became apparent. Yet the conflicting pressures resulting from giving this woman a home and setting up expectations of her as a mother whilst also planning to deprive her (possibly for very understandable reasons) of that anticipated family do not seem to have been appreciated.

The extent to which the families in which some of the women lived could be held to be actively responsible for some women's criminal activity was also recognised. Lack of appreciation, a sense of injustice and having to cope with 'chaos' were all proposed as factors precipitating the commission of crimes, particularly by middle-aged and older women. Probation Officer 8 spoke of a widow who chose to plead guilty to shoplifting 'to get it over with', although the officer felt she might have had a defence to the charge:

'It's the saddest case I've ever come across. Her family meant everything to her but they didn't have the same regard for her.'

The subsequent probation order provided an opportunity for the probation officer to undertake 'grief counselling' with the woman - a valuable service but, it might be argued, one which should not have required the

catalyst of a criminal conviction to obtain. Probation Officer 5 described a woman whose husband had left her for a younger woman (cf. Ivy in Chapter Three). Ethel was on probation for the theft of a chicken valued at £2:

'She's a sad little lady who has just had all the spirit knocked out of her....But she's a very upright woman - she thinks it's terrible that her husband should be allowed....She got herself into a state....and she had to sit there and not be able to defend herself about what he'd done to her. And she put her coat on and went out and thought "Why should I pay for this chicken?".'

(194)

This apparently irrational behaviour arising from a sense of powerlessness in the face of injustice has been described elsewhere (Carlen, forthcoming 1988) as the 'Sod It' Syndrome, and it is evidently not confined to young, overtly troublesome women. Probation Officer 5 cited a further example of a woman whose crime could be viewed as a response to years of being 'a dish-rack and a door-mat':

'She's now got a grown-up family....and she's going through the unhappiness of the children not supporting her. They don't do the jobs in the house, they don't help as much as she feels they should. She feels she's providing a home, and why should she?'

(194-5)

But perhaps the most vivid description of the damaging effects of the family came from Probation Officer 9 in her discussion of Maureen's chaotic family situation. The following are excerpts from her interview:

'Maureen, although she's cast as the non-coper, is the coper, and she copes by committing offences, to try, in her way, to get them out of trouble. But all she manages to do is get herself into trouble. The family do survive while she's away, and they have very little regard for her really. Maureen's been diagnosed over the years as schizophrenic, personality disordered - it's usually been those sorts of labels that have

been bandied about - or "subject to anxiety attacks". I mean, I don't know what you do with a label when you've got it. She certainly does get very anxious about things....and she can see that she is over-reacting, but still isn't able to stop over-reacting....The family have gotten almost to "Oh, she's off again" and collude with each other in isolating Maureen as the problem. In effect, the problems are family-based, rather than all centred in Maureen.'

(222)

Within social work discourse, such an assessment has a sound basis in the theory of Family Therapy (e.g. Barker, 1986), but the likelihood of the officer being able, in practice, to intervene in this family in the way she would have liked was remote, for two reasons. Firstly, the ideology of the family still succeeds in holding the working-class mother responsible for any chaos which surrounds her:

'Maureen is chaotic (and) it does tend to generate chaos around her. Because it's the woman in that situation, it has far more impact on the family at large than if it was a man.... Perhaps it's because the woman is the one who is always cast as the one who should do the coping and the managing and the looking after of the children. When men become ill, they become almost like another child for the woman to cope with, but the man doesn't seem to cope very well when it's the woman who is ill. It's like a cultural (thing) - with that particular generation - Women's Lib had no impact at all.'

(224-5)

Secondly, both the psychiatrist and the social workers involved accepted, and thus reinforced, an assessment of the situation in which Maureen was identified as the problem:

'Social Services labelled her as a "bad mother"; the psychiatrist just sees her as "the patient"; husband just sees her as "a failed wife and mother" - nobody has actually spoken to Maureen as a woman, as a person in her own right.'

(226)

The demand for the woman in a family to be the one responsible for bringing about change was also illustrated by a probation officer who was supervising both a husband and a wife on probation. It was clear that his expectations of what could be achieved in work with the two clients varied greatly. His overall aim in the case was to improve communication between the couple but the focus was primarily on the wife:

'I've got her practising telling him specifically where she is going and talking to him about it when she comes back....He is more reporting as a probationer. He comes in and we play a game of pool or something like that.'

(Probation Officer 10: 230 - male)

Mary Eaton (1986) found that when probation officers were preparing social inquiry reports on men, they used home visits to meet and assess significant others (usually women) in the men's lives, whereas such visits in the cases of women were used to see what kind of home they maintained. Probation officers are also more keen to involve the female partners of men under supervision than the male partners of women. Implicit in this practice is the assumption that it is women who should influence and bring about change in relationships. A probation officer working at a Day Centre, whose clientele (as with all Day Centres) was predominantly male, told me:

'We are also attracting wives....or girlfriends of men who are clients. Some females (here) are not clients and are as near to volunteers as possible.'

(Probation Officer 11 - male)

By the term 'volunteers' he was referring to the Service's 'voluntary associates' who befriend clients and assist in other ways without payment. The use of the term in this context, however, seems somewhat ironic, given the level of choice which these women probably had within those relationships. The nature of that relationship was also heavily

circumscribed. The 'volunteer' might very easily be reconstructed as the 'whore' if she overstepped the bounds of correct behaviour in this male domain, as the officer continued to explain:

'They may have a boyfriend who is at the Centre....that boyfriend may change from week to week, but they will tend to relate to a particular man. One or two of the women will tend to relate to a number of men. We've had suspicions, for example about the activities of one of our females....about using us as a sort of picking up spot.'

(246)

So, in order to be welcomed as a respectable influence at the Centre, a woman must be seen to be attached to one particular man at any one time - almost, it seems, to be identified as 'someone's property' rather than 'lost property', since the latter becomes a threat to the good order and smooth running of the establishment.

When such relationships founder, it is again often the woman who is blamed. She is seen as exploiting the relationship for her own ends - as seducing/manipulating the gullible, vulnerable man. Probation Officer 22 described one of his female clients thus:

'Last year, through relationships with men, she went to the south of France and Holland, and she goes away for weekends. When there is somebody there showing interest in her and she's provided with money and support she can be quite presentable and she's quite a live wire.'

(309)

To which one is tempted to reply, 'Aren't we all?'. But the probation officer continues:

'Much of her life is based on deception....and she's certainly one of the most untruthful people I've ever met. And because she is so unreliable in what she says, she doesn't form relationships that last. She tends to abuse friendships. So we keep going round in cycles - she gets a friendship, she abuses it,

she loses it, and she's down to rock bottom again.'

(305-6)

The 'rooting' of largely unemployed, working-class women in relationships thus produces a paradoxical 'reality' in which:

1. They are expected to be 'providers' for their families but are denied the material resources with which to provide in a socially and legally approved manner.
2. They are held responsible for any dysfunction within their families and also for bringing about positive change in those families. This means that, whilst they suffer the stigma of being the 'identified patient' (or 'client'), they are not allowed to enjoy the 'benefits' of being ill.
3. Whilst they are expected to be stabilising influences on their wayward male partners, any attempt to reap satisfaction for themselves from these relationships is interpellated as 'abuse' of the relationship.

Probation Officers are not unaware of these paradoxes, but find themselves powerless to offer alternative definitions of 'reality'. Since, in order to act as probation officers, they have first to define a situation within their own professional discourse, they often need to categorise (describe) their women clients in stereotypical ways. Probation Officer 13 summarises the predicament in describing her own attempt to 'make sense' of one woman client:

'The choices are either to see her as a good woman, caring for her family but suffering from psychological disorder which causes lapses into anti-social behaviour, or, bluntly, to see her as a liar and a thief, who attempts to con her way out of difficult situations. The truth is, no doubt, in the grey area between.'

Within the confines of such tensions, probation officers see

themselves as offering what support, advice and befriending they can, often using their limited time and material resources in imaginative and caring ways. Time after time they recounted situations where they felt they had gone beyond what was strictly required of them professionally to provide help for these women, or to try and introduce some interest and variety into their seemingly mundane and unrewarding lives. Time after time, however, they felt their attempts had been thwarted - partly by lack of cooperation from other professionals, but very often by the apparent indifference of the women themselves and/or the intractable nature of their problems. Probation Officer 14 told me in desperation about one woman:

'I feel I've had to wash my hands of her -
I used to go twice a week.'

The relentlessness of this level of demand, with little evidence of discernible progress was but one of the frustrations which probation officers experienced in working with 'nondescript' women and these frustrations will now be considered in more depth.

Contract Avoidance - Losing Modes? (cf. O'Dwyer and Carlen, 1985)

The feelings of most officers seemed to be summed up in this comment by Probation Officer 22:

'The demands have been considerable and the input
has been high - the rewards so far not very great.'

(308)

Whilst it is undoubtedly true that officers could identify many male clients of whom this could also be said, the additional frustration in working with women is the even greater rarity of 'breach' proceedings consequent to non-compliance with the conditions of supervision. Only one officer could recall taking breach proceedings against a woman and that was in an extreme situation:

'The reason the order was breached was that she refused to come in - entirely.'

(Probation Officer 16: 273 - male)

Officers tend to feel more powerless in relation to female clients:

'With women I never feel I have as much authority. Men seem to think, "If I don't report, I could go to prison", whereas women realise that courts don't like sending them to prison. I think they pick that up, don't they?'

(Probation Officer 15: 271 - female)

Such a comment also illustrates the ambivalence felt by many probation officers about the degree of agency which can be imputed to women in their contract avoidance. Here, as in many other remarks, officers imply that the women deliberately and consciously (even if furtively) refuse to fulfil the obligations they undertook in court. In this, they reflected all those discourses (outlined in Chapter Two) within which women are constructed as being more devious than men. The manner of the delivery of these remarks was, however, frequently heavily ironic, in the sense that, whilst officers often felt that such behaviour was deliberate, they also recognised that it was their own frustration that had given them a sense of persecution and that the choice of response to supervision available to the women was often extremely limited.

The mechanisms whereby these women avoided the 'gender contract' implicit in supervision were often ultimately self-defeating in that they failed to produce any sense of satisfaction or achievement for either the women or those who sought to help them. Such mechanisms could be described as 'defences of the weak' (Mathiesen, 1972) and identified as mechanisms of:

- a) Elusiveness.
- b) Demand.
- c) Deviousness.
- d) Refusal.

n) Elusiveness - like a butterfly

The commonest complaint about women on probation was their inability/ refusal to keep appointments. The following comments were typical:

'I have difficulty getting them to report.
The majority I have to visit at home - I'd
never get them in.'

(Probation Officer 15: 270 - female)

'She's unreliable, doesn't keep appointments
and shows disinterest (sic).'

(Probation Officer 22: 310 - male)

'I talked to her basically about what
probation was....to see if she'd be
willing to come in. She made it a joke -
"Oh, don't you have to come here?".'

(Probation Officer 16: 274 - male)

But home visiting had its problems as well. Probation Officer 5 talked about a voluntary associate who called 'religiously' every week on one young woman and her cohabitee:

'They know what time she's coming - and
they go out''

Another of her female clients 'loved' her to visit but:

'She has her daughters visiting her on a
Tuesday which is the day I visit. She did
say she would change their visiting day,
but never has and I don't know how much it
is a protection.'

(Probation Officer 5: 191-2 - female)

This officer felt that the woman concerned was very unhappy but was fearful of discussing this openly with the officer and was using her daughters' visits to avoid becoming too involved in a relationship where self-disclosure was expected.

But elusiveness consists of more than mere physical avoidance of contact. Many probation officers became frustrated by the women's

failure to tell them things which the officers considered to be important to discuss. For example, Probation Officer 5 told me how Pauline had:

'shoplifted, been arrested and taken to the police station, went home in an absolutely distraught state, rang the Samaritans, told them about me but couldn't ring me.'

(185)

This inability/refusal to engage in what was seen to be appropriate self-disclosure or confession (without which officers felt impotent to offer help within the discourses available to them) was one of the modes of behaviour which was categorised as 'not responding' to supervision. The following comments were typical:

'She doesn't respond.'

(Probation Officer 5: 197)

'I really don't know where I am with this girl.'

(Probation Officer 7: 214)

'I'm hardly able to have any influence on her life because she's like a butterfly.'

(Probation Officer 22: 307)

In these situations, probation officers feel that the women 'go through the motions' of adhering to the conditions of their probation orders but lack commitment to changing their behaviour or attitudes. Evidence for this is seen to exist in the apparent readiness of the women to use family responsibilities as excuses for non-engagement - or mutedness. Beryl (see above) was conveniently being visited by her daughters every time her probation officer called; Jackie (see Chapter Three) was accused by her officer of being 'not beyond using Zoe (her baby daughter) as an excuse for going (home)' and thus failing to cooperate fully with the treatment at the Special Treatment Unit. Probation Officer 15 described another young woman who 'seems to have a lot of insight into herself'

but who, it was found on further examination, was simply repeating things that her mother had said to her:

'I don't think she has any of her own self-identity. She seems to have the identity that's given to her by other people. When I hear her talking, I think, "That's her mum" because I know her mum and I know the way she speaks, and she's just repeating "parrot" what her mum says.'

(267)

The absence of 'self-identity' amongst the women was another feature of their 'rootedness' and their 'mutedness'. The women appeared to be defined - and to define themselves - in relation to other people and how they believed that other people viewed them:

'She is trying to find her own identity, but can't. She's struggling because she's got these conflicting things all the time.'

(Probation Officer 15: 269)

Given 'these conflicting things', it is perhaps not surprising that the women sometimes seemed indecisive. Jackie's inability/refusal to make up her mind about reconciling (or not) with her imprisoned husband led her probation officer (16) to declare in exasperation:

'I don't think she really knows what she wants.'

(277)

The effect of this indecisiveness and lack of 'self-identity' was to leave probation officers feeling that they could never do any 'preventive' work with women. They rarely reached a stage where they felt that the women were able to anticipate problems or develop reliable coping strategies which might help to forestall crises:

'She's extremely mixed up and it's difficult to find a plan of action for her. You're always working from crisis to crisis.'

(Probation Officer 10: 233 - male)

'What you do at the point of crisis and how you resolve it doesn't lead her to understand how it developed and how it can be prevented.'

(Probation Officer 22: 308 - male)

b) Demands - Like a baby

Having to respond constantly - and sometimes exclusively - at the point of crisis, without being able to help clients develop their own strategies for coping with and preventing future crises, in accordance with the accepted model of 'crisis intervention' work (e.g. O'Hagan, 1986) is very wearing and actually creates a state of crisis in the worker him herself. As was seen earlier, some workers eventually respond by withdrawing altogether because the level and nature of the demands become too great. Before that point is reached, probation officers seem to go through two phases of work with these women. Firstly, they try 'to be around for the moment that she needs you' (Probation Officer 22: 308). They tolerate the physical avoidance and the lack of commitment, they persist in trying to build up a relationship of trust because they know that, sooner or later, the women will need someone to turn to:

'You often get men on probation without seeing any specific problem, but with women, it's chaos - they're almost all like that. *But they tend to be not very forthcoming to get help....If things really get to a crisis (they) come in, so in that respect it is worthwhile.*'

(Probation Officer 15: 270-1 - female)

This probation officer was implying that the 'Alternatives to Custody' debate had resulted in men frequently being placed on probation because of their position on the 'tariff' (that is, because the nature of their offence or the number of their previous convictions placed them at risk of imprisonment). Women were still being placed on probation because they were viewed as being 'in need'. Consequently, a reluctance

on the part of some women to demonstrate dependence on their probation officer was seen as of more significance than a similar reluctance on the part of men. Having nurtured that dependency, however, the officers then find that the demands of the women for an 'instant response' (Probation Officer 5) become difficult to control:

'If I'm not available she's very hurt and upset - very angry because (she feels) I should be there....She's like a baby - wants a feed, cries and demands it now - and that's not reality.'

(Probation Officer 5: 189 on Pauline)

Once again, the issue of who has the right/power to define 'reality' intrudes. This officer felt that she was fortunate in that Pauline was viewed as 'a good person to work with, very intelligent and you can reason things through with her'. Most officers did not feel they could say this of the women they worked with - and even this officer was uncertain about the extent to which this 'insight' actually resulted in changed behaviour:

'She still hasn't got the answers as to why she shoplifts but she feels she's getting a bigger understanding of herself.'

(189)

And, since probation orders are time-limited, there comes a point when the dependency has to cease. The stage of 'trying to wean her off' (Probation Officer 9) (the mammillary metaphor again) requires a re-definition of the problem of elusiveness:

'I'm spacing the contact a bit more and trying to give her lots of encouragement and pats on the back.'

(Probation Officer 9: 226 on Maureen - emphasis added)

But there is a further frustration in working with 'nondescript' women which exacerbates both their elusiveness and their demands. That

further frustration arises from a feeling amongst probation officers that these women, far from being hapless victims, are rather 'stubborn and devious' (Probation Officer 17: 286 - female).

c) Deviousness - Men con, women manipulate

Probation officers frequently describe themselves as 'being manipulated' by their women clients. The comparable term used in relation to male clients is 'being conned' and most officers pride themselves on their ability to detect men who are 'trying it on' or not telling the truth. It is apparently more difficult to detect such behaviour in women because it appears to take the form of selective truth telling, rather than outright 'lying'. Women, one is given to understand, are particularly adept at representing the truth in ways which compel workers to act against their better judgment. The technique employed appears to be one of saying what the worker wants to hear (conceding a point, agreeing with an argument, expressing gratitude, promising to change etc.) but making those concessions conditional on securing certain responses from the worker. Whilst all relationships are, to some degree, marked by manipulation, the dissonance and consequent frustration provoked in probation officers by 'nondescript' women is due to their ability, despite being 'chaotic' and 'inadequate', to exploit the contradictions in the gender contract. Probation officers know that official discourse obliges them to buttress any desire on the part of these women to undertake approbated feminine roles, however passively or apparently disingenuously that desire is expressed. Challenging such expressions would involve the officer in confronting the Other of the woman's self-defined reality and openly acknowledging the inadequacies of the Imaginary of existing definitions. The only alternative is to reconstruct such women as always-already manipulative - and therefore dismissable. The following remarks from a probation officer

responsible for placing clients in Community Service projects illustrates the point:

'She was stropky in the initial interview, telling us what she was and wasn't going to do and we got trapped into going along with it. She's manipulated us - her offences were "false pretences"!'.

(Probation Officer 18: 294 - male)

Because many women commit offences defined as acts of 'deception', there is an assumption that the women themselves are deceptive. Constructing women as always-already deceptive (cf. Pollak, 1950) then makes it impossible for officers either to define reality in relation to these women or to accept their own definitions of reality. Thus, they remain forever unknowable. The consequence of this for officers was that, even where they were concerned about particular aspects of their clients' lives, they did not feel able to address these openly because they felt they could not assume that the women were being truthful. Three examples illustrate this. Probation Officer 5 was concerned that one woman client was engaging in prostitution. She described the woman as:

'Rather an unknown quantity. Lives in a flat on her own and is the subject of much neighbourhood gossip and accusation about having men up there. I suspect there's some truth in it, but of course she denies it. So I can never work with her on that one.'

(192-3 - emphasis added)

Probation Officer 17 was concerned that one of her clients was anorexic:

'I've done what I can but she's quite stubborn and devious - that's the wrong word. I don't mean evil - but she will cover up when she's not eating. She'll say, "I'm eating more than I was" - which means she's not!'

(286)

Probation Officer 7 had just received a letter from a woman client, saying that she had been sexually abused by her father, but the officer was unsure how to respond:

'Gillian is very attention-seeking....you can never tell whether she's telling the truth or not.'

(213)

This seems particularly ironic when there is now a public campaign to encourage women to bring such abuse to the attention of the authorities!

Perhaps the most frustrating aspect of this perceived deviousness was the unpredictable moodiness of the women, which seemed to make any notion of planning meaningless and often served to sabotage attempts at cooperation between different agencies working with the same woman:

'One minute she's all lovey dovey and the next minute she's up in arms slating everybody - she doesn't like the social worker, she doesn't like you - and this is how it goes.'

(Probation Officer 6: 201 on Eileen)

'Sandra is a manipulative lady who plays off one agency against another. Caution and discretion are needed in dealing with her.'

(Probation Officer 3: 172)

Such 'playing off' of workers and agencies against each other may be seen as an example of the 'nondescript' woman's ability to exploit the often contradictory interests which, as has been seen, these agencies have in her.

Deviousness was seen as a mechanism requiring a greater degree of agency than either elusiveness or making demands. Manipulative women were viewed as being quite powerful and their behaviour provoked anger amongst officers rather than indulgence or understanding. Feeling used or exploited by the women, probation officers either became wary of making any sort of commitment to, or on behalf of, these women, or they

adopted what might be termed a 'mother superior' stance, in which they regarded the women as children needing firm but loving handling. Either way, the women's behaviour was stripped of any meaning it might have in relation to the inappropriateness of the discourses within which the probation officers were struggling to assess them.

d) Refusal

Defiance, assertiveness, decisiveness were not common characteristics of 'nondescript' women, but one or two examples were given by probation officers of women who appeared to reject openly the help that was offered to them. Jackie, as has been seen, nearly lost her chance of a probation order when she (albeit apparently jokingly) refused to agree to attend office appointments. Probation Officer 1 had gone to a great deal of trouble to persuade a fine default court to reduce one of his client's fine and compensation order, only to find the woman far from grateful:

'I've never known compensation costs be squashed like that - absolutely amazing. She came out....with £20 odd (to pay) at a pound a week - and she objected!'

(146)

Probation Officer 19 (male) had undertaken the even more time-consuming job of finding a choice of no less than three alternatives which he saw as solutions to a client's accommodation problems, including a place in a probation hostel:

'I wanted her to go to the hostel but she refused all three (alternatives). She said to the magistrates, "Please send me to prison". After an adjournment, they sent her to prison! She got a six month sentence, during which time she lost two months' remission for bad behaviour - throwing plates and hitting other women, and generally being disruptive.'

(298)

Probation Officers were frequently at a loss to understand such self-defeating behaviour yet, as O'Dwyer (O'Dwyer and Carlen, 1985) has suggested, the line between surviving and failing to survive in situations of oppression is a very narrow one. These women were engaging in the emotional/social equivalent of 'cutting up'. Unable to 'hit back' at the system, they internalised their responses to its pains and tensions and self-mutilated in an attempt to remain independent of others' inroads upon them.

Women like Mandy certainly would have presented problems to probation hostel staff with whom I spoke. In 1983 there were only four probation hostels catering exclusively for women and I visited two of these (as well as one mixed bail hostel). The obvious problem in providing hostel accommodation for women is the need to provide accommodation also for their children. Two of the hostels I visited had some rooms for women with children and one catered exclusively for women with children. Neither hostel was short of places and the main reason given for lack of referrals was the reluctance of many women to make the voluntary decision to move away from their home areas, even though the alternative might be prison.⁽²⁾ Staff at both hostels maintained that they had to deal with a lot of psychiatric problems and that medical back-up was inadequate. At the time of this study, both hostels appeared to attempt to provide for the women an experience of a substitute family, which involved both substitute mothering of them and instruction to improve the quality of mothering by them. Since that time, I understand that at least one of the hostels has attempted to provide a regime which focusses more on raising the consciousness of the women to their own needs as individuals and on increasing their assertiveness to meet those needs through cooperation with each other. At both hostels, however, pessimism was expressed about the lasting effect of any benefit gained

at the hostel when the women returned to inadequate accommodation and support in the community.

Relationships with courts, psychiatrists, solicitors and social workers

On the whole, probation officers were irritated by the attitudes they encountered from court personnel and fellow professionals. They felt that sentencers were sometimes the authors of extraordinarily contradictory discourses. Probation Officer 7, for example, had been horrified when she discovered the reasoning behind Jean's two year prison sentence for stealing a baby for twenty minutes:

'I only recently read the transcript from the trial - it was quite horrifying....The judge actually sent her to Styal because there would be more opportunity for her to look after other people's children. Isn't that appalling?'

(215-6)

Such logic, however, would have made sense to a judge whose common sense understanding that women 'need' to be mothers would have been paradoxically reinforced by legal and psychiatric discourse which had constructed Jean as 'needing' discipline. The existence of a setting in which Jean could actually practice to be a mother, under strict supervision and on other people's children, must have seemed an obvious solution to this woman's apparent twin needs for control and restoration to femininity.

Probation officers also felt that solicitors were often lacking in professional integrity, that psychiatrists were often indifferent and egocentric and that social workers were simply obstructive. Cooperation, on the occasions when it was identified, was treasured as a rare commodity, usually won through hard-fought battles or teeth-gritting sycophancy. Two cases illustrated these points vividly.

Mandy, the woman who had asked magistrates to send her to prison

(see above), was later convicted of arson with intent to endanger life, an offence which can carry a life sentence. At the Crown Court, Dr. G reported that 'she was a psychopathic personality....too dangerous for him to admit to his clinic and he had made arrangements for the forensic psychiatrist from Broadmoor to interview her' (recounted by Probation Officer 19). The probation officer felt that this recommendation was too extreme and that there must be other places Mandy could go to. The solicitor agreed and promptly sought a second opinion from another psychiatrist:

'He wrote a report saying that she was a psychopathic personality, that prison would do no good for her, certainly Special Hospital would do no good for her and as he didn't know of any other hospitals that would be interested, probation in the community was the best thing he could suggest. So we'd got two psychiatrists, the second doing a white-wash at the request of the solicitors who were paying him privately - not that I can ever prove that!'

As was seen in Chapter Six, psychiatrists routinely invoke the rules of 'treatability' to legitimate the non-treatment of defendants diagnosed as suffering from psychopathic disorders. The barrister subsequently tried to persuade the probation officer to endorse the recommendation for probation and, when the latter refused the request, refused to submit any psychiatric reports at all. The probation officer continued:

'I felt she needed hospital treatment but it seemed that the community was not prepared to provide any of the resources that this sort of person requires. I left it at that and she got a three year sentence.'

(302)

Gwen's offence of throwing a brick through her own window hardly put her in the same league as Mandy. The magistrates, however, wanted a psychiatric report and were threatening to remand her in custody in order to obtain it. Probation Officer 2, who was on court duty that day,

was concerned about this, discovered that Gwen had received psychiatric treatment in the past and set about contacting the local psychiatric hospital. When she eventually got through to the appropriate consultant, the following conversation ensued:

'So I say, "Gwen X - is she known to you?"
 "Ah yes", he said, "What's the trouble?"
 I said, "She's committed this offence - it's only a minor offence, but the magistrates want medical reports and it means that unless you can take her, she will go to prison."
 So there's silence at the end of the phone.
 "And why do you think she shouldn't go to prison, Mrs. C? Don't you think it might do her good?" I was so horrified at this that I said, "No I don't think it will do her good!" I forgot for a minute that I was speaking to this God-like man. "I see one of my tasks as keeping the inappropriate out of prison and I actually think this lady is inappropriate." And he started to laugh and he said, "I just wanted to see whether you had a good reason."'

(161)

Gwen had also had dealings with Social Services because her daughter had been taken into Care and had been placed with foster parents in Sheffield. In theory, she still had a right of access to her daughter, but in practice, Social Services were fairly obstructive. When Gwen was placed on probation, officer 2 made an effort to get access organised and she managed to arrange for the daughter to be brought from Sheffield during the school holidays. This apparently worked well, although the social worker was not happy about it and a further attempt at a similar arrangement foundered. However, the social worker did agree, very grudgingly, to take Gwen to the station to catch a train to Sheffield. In the event, the social worker was late, Gwen missed her train and didn't get to Sheffield until 4.30 in the afternoon. The child was taken away at 5.15. Probation Officer 2 claimed that Social Services were also being very unhelpful in not allowing Gwen to use their facilities for social activities, although she was quite clearly

recognised as being mentally ill. She felt that, as soon as Gwen was placed on probation, Social Services had refused to have any further responsibility for her.

The stories of Gwen and Mandy illustrate the iatrogenic nature of their treatment. Both were subject to properly authorised welfare intervention yet their nondescriptiveness had over-determined their failure. The discourses within which they had been constructed had failed to legitimate the Other of their own definitions of reality and had thus provided for them a definitional trap into which they could not fit but from which they could not escape. Victims of the system's inability to categorise them, they had, in reality, been set up to fail. In this situation, probation officers frequently saw themselves as hostages to fortune, the provision of the 1983 Mental Health Act that hospital admission should only take place when treatment is available having been turned on its head to sanction psychiatrists making their actual diagnoses of mental illness fit the available treatment.

'"There is nothing we can do for her; therefore, there is nothing wrong." I'm afraid I've got a bad impression of (psychiatrists). If they don't think they can do anything, they say there is nothing wrong (and) they recommend a probation order.'

(Probation Officer 10: 240 - male)

The dilemma facing probation officers was clearly expounded by Probation Officer 16 in a discussion about the Special Treatment Unit. On the one hand, he was sceptical both about the treatment on offer, which was based on 'keeping people talking', and about the very brief time that people were required to be resident:

'In the nicest possible way, they are just waffle groups. Now that can be very useful over perhaps a year, but in a couple of weeks, what good does it do anybody?'

On the other hand, he felt compelled to make use of the facility for two reasons:

'One is the possibility that she could get treatment that I couldn't possibly give her - the feeling that I can't handle this, it is way beyond me....There is a cry for help - from me - about what to do with the case. The other is a ploy, because you know that even if the treatment does her no good at all, providing she spends a respectable amount of time there, it's not too painful for her and it's a lot less bad than prison.'

(280)

In other words, he felt the need to work strategically. But ploys have a nasty habit of backfiring, especially if there are any further court appearances:

'I think what they'll view her as is someone who's been given the best help available in the area and failed to use it....the recommendation is two-edged in that it saves them this time but will crucify them next time.'

(281)

Contract Avoidance - Winning Modes?

Elusiveness, demands, deviousness and refusal constitute what have been described elsewhere as 'losing modes' (O'Dwyer and Carlen, 1985). But there were rewards as well for probation officers working with 'nondescript' women. Obvious progress might be hard to detect, but those officers who were content to set modest goals often found that they were offering a much needed service, which was consistent with the Probation Service's motto, 'Advise, Assist and Befriend'. Most of the women I spoke to impressed me as being 'reluctant converts' to probation. They had been initially suspicious, or even downright fearful, of being on probation. They had, however, come to see that there were benefits to be gained either by paying lip-service to the idea of probation (although

these were likely to be viewed as the 'manipulators'), or by accepting what they perceived to be a genuine offer of friendship and help from another individual who was 'nice', who had access to certain resources, and who was coincidentally designated 'probation officer'. As Kevin Kirwin (1985: 39) observes:

'Being treated in a normal humane manner is often a pleasant surprise for....clients....'

Maureen had been very conscious initially of the stigma (to a non-criminal) of being 'on probation':

'At one time, I'd never speak to anyone who'd been on probation, but I've found out there's ways they can advise you to save you getting into trouble.'

(104)

Gwen was afraid that, in addition to the control exercised over her by her doctor, she would now be under surveillance by agents of the criminal justice system:

'I was very frightened of probation - I felt as though I was being owned by the police....I felt as though my life wasn't my own.'

(89)

Gwen had feared that being on probation would mean that she would have to forego the 'right' and the 'capacity' to 'own' herself - that is, to define her own actions in the future. Such remarks also serve to explain why some women (like Mandy above) prefer to go to prison.

But these women, along with most of the others, appeared to have been 'won over' by the 'helpfulness' of their particular probation officer. The process had started in court where, as Margaret Powell (1985: 18) has stated, probation officers have traditionally been expected to 'offer immediate help - or at least a calm and clear explanation - to distressed and uncomprehending' defendants. Indeed, several of the

women expressed appreciation at the presence of their probation officer in this bewildering setting:

'I could look at Mrs. C and think there was a familiar face.'

(Ivy: 111)

'If it wasn't for Mrs. C, I would have gone to Risley.'

(Gwen: 84)

Later on in the relationship, 'helpfulness' was defined by the women in two ways: firstly, material help and secondly, non-intrusive listening and advice-giving. In other words, the kind of help which the women looked for and appreciated most from their probation officers consisted of money (or at least help in obtaining it) and befriending.

Occasionally, of course, there was some confusion about which of those two kinds of help was being offered and which asked for - as in this exchange between Ann and her probation officer (20 - female). The latter was clearly referring to Ann's alcohol, drug and marital problems, whilst Ann's concerns were more immediate:

PO: 'Tell us before things get desperate, then we might be able to help.'

Ann: 'I want help - I really need some bedding.'

Such an exchange illustrates the social worker's ubiquitous dilemma about 'presenting' and 'underlying' problems. The basic social work skill of 'active listening' is premised on a sceptical approach to what people say they need and how they explain their own behaviour. It is assumed that people either do not always mean what they say (conscious or unconscious defensiveness) or, if they do mean it, they do not understand their own capacities, resources and limitations. At its worst, 'active listening' by social workers has involved the total reconstruction of what a client has said, in terms which fit the particular

ideological framework to which the worker is committed (whether that framework be traditionally psychotherapeutic or radically political - see, for example, Corrigan and Leonard, 1978). At its best (see for example Egan, 1986: 79-93) it involves the social worker in a respectful and sensitive endeavour to help the client understand her/his own paradoxical responses to pretty intolerable material and emotional situations, and develop strategies for action to improve those situations.

Kirwin (1985: 41) argues that probation officers frequently use their distrust of 'presenting problems' to justify refusing to undertake 'mundane' tasks for clients, such as 'phoning and writing to the DHSS, housing departments and fuel boards or arranging nursery places'. Such 'mundane' tasks, however, may be daunting for women who are already lacking in confidence and self-esteem. A willingness by probation officers to use their professional authority and credibility (not to mention their telephones and postage) to negotiate with officialdom on their clients' behalf was certainly appreciated by the women, especially if there was 'no strings attached', as this excerpt from Veronica's interview illustrates:

AW: 'Have probation officers been of any help to you?'

Veronica: 'Yes, they're a good help. I only have to ring up and they'll come down - I don't have to go up. It's very rare I've been up - and they've always left me - even though I'm on probation, they've not been "at" me.'

AW: 'In what ways have they been able to help? Has it been someone to talk to, or with money?'

Veronica: 'Well, with bills - they're sent them off to Social Security - they're done all the writing and sorted it out.'

AW: 'When you had your drink problem, did they suggest you joined any groups for people with drink problems?'

Veronica: 'No, not really - they let me make my own decision.'

(95-6)

For some probation officers, the need to do 'mundane' things for clients was seen as a stage through which they had to go in order to help clients to be more self-confident:

'She will take advice, lean on you, allow you to do things for her that she isn't capable of doing for herself and also....you can.... tell her exactly what to do, with the confidence that she will go and do it. She may not totally understand what you've told her to do, but she'll do it! She's good that way.'

(Probation Officer 10: 229 - male)

Apart from giving, or helping to obtain, material assistance, the most important function served by probation officers - according to the women - was that of alleviating loneliness. Being available, having time to listen, helping to find 'ways round' (Maureen: 104) - this was the service women wanted from their probation officers.

For Maureen and Ivy, who already saw themselves as burdens on their own families, a sympathetic and disinterested listener was invaluable in preserving the remnants of family support:

'I can tell her anything....You can't tell your children - you've got to tell someone who's not involved. You don't want to foist your troubles on your family because they won't come and see me. They'll say, "Oh, crikey - neurotic" - which perhaps I am.'

(Ivy: 116)

'I like to come and talk to Mrs. C. It's somebody to talk to and it's better than going blabbering and shouting your head off in the house.'

(Maureen: 105)

Corrigan and Leonard (1978) might argue that, by befriending, probation officers are merely pandering to the ideology of the family, still

allowing family members to channel all their problems on to 'mum', who then gets a probation officer to help her, instead of working with the whole family, 'helping them to understand the tremendous contradictory pressures placed upon them by the economic structures of capitalist society' (1978: 29). To which many probation officers would no doubt reply, 'It's all right for you to talk' (Cohen, 1975) and continue with the one aspect of their role which is both congruent (that is, lacks dissonance) and appears to be rewarding to worker and client:

'I think she needs human company, I honestly do.'

(Probation Officer 1: 150)

'At least it gives her another adult to share her problems with.'

(Probation Officer 5: 195)

'It's one of those cases where you can put your theory into practice. It's quite good for me - I get lots of feed-back from her.'

(Probation Officer 5: 185 on Pauline)

The building up of this relationship of trust, however, takes time.

Pauline was experiencing her third probation order:

'I really value what Mrs. C says to me. I trust her implicitly....that may be because I've known her for years. In that way I feel I'm luckier than other people. They perhaps are only just getting to know their probation officer properly when the probation order is up. I've found that now it's like an old friend and I know what she's like, so that now I trust her.'

(60)

Eileen had known her probation officer even longer:

'I've been involved with Miss D since 1968.... when I was 14. She's been a great help - she's been involved 15 years - we've got an understanding. But it's only since September that I've been willing to listen to their point of view.'

(50)

Probation Officer 6 wryly endorsed this view of the relationship:

'"At least I'm listening", she says. That's progress!'

(204)

In the efficiency-conscious Probation Service of the 1980s, such a lengthy nurturance, leading to such equivocal results, could hardly be justified as the most cost-effective use of officer resources! And there is, of course, no guarantee that such hard-won trust and understanding will actually prevent further criminal activity. As far as Pauline was concerned, the opposite seemed to be the case. Soon after I interviewed her, she committed a further offence and prosecution was only avoided because a) she was already on probation and receiving psychiatric treatment and (perhaps more significantly) b) the police-woman involved had lost the relevant till receipt!

Some officers, however, did have confidence in their ability to reduce women's lawbreaking activity:

'Women tend to offend when they've got a crisis, so you can justify (probation), can't you? You can find reasons why they may have offended and you can say, "If this woman was given help, we think we could prevent her offending". I've never had any women who've carried on offending once they're on probation.'

(Probation Officer 15: 271 - female)

Janet would have agreed with that sentiment. She felt that being able to contact her probation officer (21 - male) helped her to resist the temptation to shoplift and that this was more important in this respect than the Community Service which she was also doing:

AW: 'Do you think that CS is helping you not to get into trouble again?'

Janet: 'I don't know. I've had the craving, but when I do, I come down and see (Probation Officer 21).'

AW: 'So in terms of keeping out of trouble, it's more helpful to come and talk to M?'

Janet: 'Oh yes.'

(70)

A third way in which probation officers might be said to be of help to nondescript women was through enabling. Enabling consisted of providing the women with the kind of environment in which they could actually achieve something for themselves. What they achieved was not within the control of the probation officer - and sometimes it was not what the officer had originally intended. Nevertheless, the crucial characteristic of such provision was that it created a space in which the women were empowered to make some genuine choices, albeit within heavily circumscribed limits. In a small way, it allowed the women to 'shift the signs' of the gender contract in ways which were not, for once, self-defeating. This provision took a number of forms:

1. Specialist facilities. Women on probation were offered access to specialist facilities, but on a voluntary basis, rather than as a condition of their probation orders. They were then free to make what use they could of them, without being threatened with breach proceedings or losing the custody of their children:

'Kathleen went to the Alcohol Unit and she lasted there a week and then she discharged herself. But - she hasn't drunk since. That was two months ago - so she's done very well.'

(Probation Officer 15: 271 - female)

2. Voluntary work. Women on probation were enabled to do 'voluntary' work. Whilst one might argue that such 'servicing' work reinforces rather than challenges gender stereotyping, it was clear that one thing which many of these women suffered from was a lack of appreciation. Being offered the chance to do something that they were good at and be praised for it was very important in developing their self-confidence:

'Social Services run a day centre....they bring old and handicapped people in....That's been very useful for Maureen, because she feels that she's useful and that's helping her confidence. It also absorbs some of that energy which is splattering around - it gives it more structure.'

(Probation Officer 9: 226 on Maureen)

Thus it proved possible for probation officers to exploit the contradictions of the gender contract - or to work strategically - though the fact that they were also saving the state money whilst helping to keep the women themselves poor must not be overlooked!

3. Community Service. The logical extension of this was to allow women to do 'voluntary' work in order to discharge their obligations to the court. The issue of the appropriateness of Community Service for women is a vexed one (Dominelli, 1984) but there was no doubt that the two women I interviewed who had served such orders had not only thoroughly enjoyed their work, but had experienced a sense of achievement as well. Having admitted that she never paid fines, Carol said:

'The only thing I think they should give is Community Service, because then you don't have to fork any money out and they don't have to fork money out (for prison). And I like working....I don't mind cleaning - I'll clean the whole house for you as long as you appreciate it.'

(81, 78)

Janet also enjoyed the work she was doing on Community Service (helping at the coffee bar in a 'drop in' centre for the over 60s):

AW: 'Are you on your own when you're doing CS?'

Janet: 'Yes.'

AW: 'Do you prefer it like that or would you prefer to be with other people who are doing CS?'

Janet: 'I don't know - I've never met anyone else who's doing CS.'

AW: 'Do you have a supervisor with you all the time?'

Janet: 'She pops in from time to time - she's all right.'

AW: 'Are you managing to do your hours regularly or are you having to have time off?'

Janet: 'I'm doing them regularly.'

AW: 'I should think you'll be finished soon at that rate?'

Janet: 'Well, I'm stopping on.'

AW: 'That will just be on a voluntary basis, will it?'

Janet: 'Yes.'

AW: 'You're really enjoying it then?'

Janet: 'Yes.'

(69)

On the other hand, one probation officer responsible for placing women in Community Service schemes felt that women fared better when they were not asked to do 'women's work':

'Certainly my experience is that we have less trouble with women when we just place them on a project and they turn out on Sunday with a team (of men), than when we continue the practice....of trying to tailor-make situations to fit the woman.'

(Probation Officer 18: 293-4 - male)

He did, however, feel that women might feel 'more comfortable' if such teams had women supervisors (of whom there were apparently plenty) - 'because of things like toilet arrangements, which are sometimes a bit difficult on site'.

There is, therefore, a dilemma for the probation officer who wants to resist the prescriptive description of her/his female clients within the discourse of femininity. As can be seen from these accounts, many women are not seeking to break out of the ideologies that confine them to domesticity, sexual passivity and sickness. Rather, they want to have the worst effects of those ideologies alleviated. The most

appreciated probation officers were those who worked strategically to obtain material help, those who befriended in a one-to-one relationship and those who provided part-time work opportunities which were role-appropriate (so that the women could feel confident in doing them well), relatively private and autonomous (so that the women did not feel conspicuous or stigmatised) and, above all, appreciated! But individual solutions do not provide the alternative material and ideological discourses within which women can constitute themselves differently - only collective political and policy solutions can do that. The apparently dysymmetrical relationship between the personal and the political is the trap in which probation officers are also caught, as will be seen in the next section.

The Practice of Working Strategically

As might be expected, it was easier for probation officers to say what was wrong with their existing ways of working than it was to 'read off' from their own criticisms what was needed to improve things. When asked what they felt might ideally help the women with whom they were working, the range of responses was fairly limited.

Home management assistance

The desire to help women cope better on their woefully inadequate incomes prompted several officers to argue that there was a need for home management/budgeting courses:

'She needs a home management course - showing her how to cook. I've been to her house and seen her with tins of potatoes, and what she's paid for those would buy 10lbs of potatoes and a cauliflower or something. But everything was tinned. It's the kind of home where she'd get up and spend £1 on cakes for the kids for breakfast, when she could have bought bread, eggs and so on for the same money. You'd need a lot of time to get that across and show her.'

(Probation Officer 3: 174 - female)

'I've always felt that what a lot of the women need is social skills/home skills training - some sort of conditions to attend day centres. Sort of basic child-rearing skills and how to play with your kid and manage on small budgets.'

(Probation Officer 12: 264 - female)

Many probation officers expressed frustration that a woman might actually be freed to live a marginally more fulfilling life if she could make some simple decisions differently. Since they saw themselves as powerless to effect any radical change in her economic situation, effecting small, 'marginal' changes was seen as crucial to a woman's survival and a legitimate part of 'working strategically'. However, such patronising attitudes, riddled as they are with stereotypical assumptions and moral judgments about the ways in which working-class women do and should live, run the same risk as does the encouragement of women to do voluntary work (see above). Ultimately, by allowing women's economic oppression to legitimise the restriction of their choices, such well-intentioned efforts serve to reinforce rather than alleviate that oppression.

Survival skills

Other probation officers recognised the problem of defining women's needs in stereotypical ways. There exists a fairly wide variety of provision of social (i.e. 'survival') skills training, especially in day centres, but such groups are always dominated by men. Women are rarely expressly excluded but, understandably, few have the interest, confidence - or social skills - to participate, especially when faced with the following kind of attitude:

'One of the problems is that we have a rule that the centre is, officially, for sixteen plusses. Women have brought babies in occasionally; during the summer, young children would be brought in and we've tolerated that. We've turned a blind eye, but we wouldn't encourage that.'

(Probation Officer 11: 249)

There have always been 'prisoners' wives' groups' run by the Probation Service but these have been premised on the concept of women being attached to men (who are the 'real' clients) and have focussed on how the women can cope alone until the return of their husbands/cohabitees. There have always been women who have found, through such groups, that they can cope better without their man, but this has been viewed traditionally as a slightly embarrassing side-effect of the groups.

The idea of regarding women as people 'in their own rights' with their own survival needs requiring specialist separate provision, is a relatively new and controversial one. In 1983, Probation Officer 11 was still weighing up the pros and cons of such a move at the day centre:

'I think there are women who wouldn't perhaps want to come into the day centre for all kinds of reasons but would want to come into some kind of specialist provision....If it becomes a mums and toddlers group....then obviously that will tend to preclude women who haven't got kids, but if it becomes a women's group, some of whom happen to have kids, then that is a different emphasis altogether. I think we were tending to look at mums and toddlers, especially from the point of view of "children at risk", with mums who are finding it difficult to cope with kids and the mums who have been to court for child abuse.'

(249-50)

So, yet again, it looked as though the needs of others were likely to dominate provision for women. The fact that increasing numbers of young, poor women are persistently offending does, however, present a challenge to probation officers, who have not hitherto given any serious consideration to separate provision for women.

Earlier intervention

Probation Officer 1 spoke of his concern that women who shoplifted were often allowed to appear in court two or three times before being offered the help of a probation order. Whilst he understood the desire

to keep women 'down tariff', he felt that such reasoning illustrated probation officers' lack of confidence in their ability to help women stop offending. The debate about the relative merits of earlier or later intervention by welfare agencies is one which both extends beyond considerations of gender and has tended to ignore gender. Much work has been done, for example, on the implications for recidivism amongst juveniles (for which read 'boys') of early formal intervention (Rutter and Giller, 1983; Rutherford, 1986), but the assumption remains that, since women are not typically recidivist, such debate is largely irrelevant. As has been seen, however, some women are caught reoffending. But the 'developmental approach' (Rutherford, 1986) to juvenile justice is irrelevant to adult women lawbreakers for at least two reasons:

1. Unlike juvenile boys, they are unlikely to 'grow out of' crime.
2. Unlike juvenile boys, they comprise a muted group in society, with neither the self-image, social networks nor material wherewithal to become successful, dominant citizens, as it is implicitly assumed juvenile boys have the potential to do.

The ideology of radical non-intervention is dependent on the existence of apposite, but hitherto unrecognised, informal resources in the community which will, once recognised and mobilised, serve to support the delinquent through the 'bad patch' into responsible adulthood and citizenship. It is not the task of this thesis to argue that such ideology fails to take account of the material circumstances and prospects of many working-class youths. It is important, however, to highlight the inappropriateness, in the wake of 'Alternatives to Custody' discourse, of adopting a blanket policy of later rather than earlier intervention in relation to all client groups. The challenge in relation to female lawbreakers is whether early intervention can empower women to take more control over their lives or whether it inevitably restricts their choices

and places them at greater risk of custody.

A major political decision

Probation Officer 4 felt that he could only envisage improvement in the women's situations coming about as a result of a 'major political decision' and he felt that he had to supplement his work in the Probation Service with direct political work. His analysis incorporated gender and class considerations:

'I think one of the major problems is a need to rationalise our whole financial approach to the family. When you consider the cost of keeping people in prison, I think that a simple financial subsidy to the family would reduce many crimes of provision - there tend to be very few middle-class offenders in prison.'

AW: 'You'd say that was true of women as well?'

'Yes. I take the view that the middle classes seem to be able to contain their problems because they have the financial means to do so, whereas families who don't have those means find that their behaviour tends to spill over into the community.'

(Probation Officer 4: 181-2 - male)

The challenge implicit in these remarks is whether probation officers should actively support political campaigns to improve the economic position of women in society.

Conclusion

This chapter has sought to deconstruct the interweaving, and at times conflicting, discourses which circumscribe the work of probation officers with 'nondescript' women. It has demonstrated that probation officers recognise that, whilst such women cannot be 'quite labelled' (Probation Officer 1) or defined within the discourses of domesticity, sexuality and pathology which constitute the 'gender contract', they are nevertheless 'rooted in relationships', and trapped by the contradictory

effects of that 'rootedness'. In their endeavours to defy description and avoid the 'gender contract', 'nondescript' women employ mechanisms which are interpreted by probation officers as elusiveness, demands, deviousness and (though rarely) refusal. These mechanisms are regarded by probation officers as being self-defeating or losing modes of behaviour which lead the officers to experience feelings of frustration and powerlessness. Similar feelings are engendered in probation officers by solicitors, psychiatrists, social workers and magistrates who, they feel, not only fail to appreciate the restricted range of legitimate responses available to working-class, poor women, but who, through their own discursively circumscribed practices, actually restrict even further the choices available to these women.

In the absence of alternative discourses in which to describe these women and thus render them eligible for alternative modes of help, it has been argued that probation officers provide a service of 'sheer humanitarianism' which has some, albeit limited potential, both to alleviate the worst excesses of penal, psychiatric and social work discourses. That service also opens up the possibility of employing alternative mechanisms for avoiding the 'gender contract', thus offering new choices to 'nondescript' women to engage in 'winning modes' of behaviour.

It has been argued that, whilst it is not possible to 'read off' specific reforms for probation officers' practice from the analysis of this chapter, several issues have been identified which suggest that there exists a dual dilemma for probation officers in making decisions about both the 'moment' and the nature of intervention in relation to 'nondescript' women. Such issues are relevant not only to the practice of probation officers but also to the practice of all those 'experts' with whom this thesis has been concerned. The final chapter will conclude

thesis by presenting in summary form the common and the conflicting
ments that characterise expert discourse in relation to 'nondescript'
en and by discussing some of the implications for probation officers.

CHAPTER EIGHT

NONDESCRIPT WOMEN: SUMMARY OF THESIS AND CONCLUSIONS

Despite an increasing interest in the 'women and crime' question, there are still few empirical studies of women's experience of the criminal justice system. Of those studies that do exist, few include accounts given by female lawbreakers themselves. This study, therefore, has attempted to break new ground by systematically examining such accounts. It then compares the women's definitions of their problems with those of the various judicial and welfare personnel charged with their care and control. By identifying the rules governing the various discourses within which female lawbreakers are routinely constructed, the thesis discovers the gaps, contradictions and coherences in existing professional claims to know about such women. Consequent on that analysis the thesis constructs a new object of discourse - the Nondescript Woman - who constitutes the Other of existing discourses, and whose challenge to those official discourses has to be constantly erased by professional techniques that result in the women being muted.

The arguments developed in this thesis are now summarised chapter by chapter.

The Introduction described how this empirical study arose from my professional concern as a probation officer about the small, but disproportionately demanding group of women clients who elude the official descriptions which traditionally render female lawbreakers recognisable within available judicial, social work and medical discourses.

The aim of the study has, therefore, been two-fold - to draw attention to the needs of one particularly neglected group of lawbreaking women and to describe the ideological and material conditions which

render them nondescript.

The thesis of this study is that 'nondescript women' are a muted group within the criminal justice system. They are subject to multiple discursive oppression which is subtle and sophisticated. Their oppression is dependent not on their active and constant domination by one group (men) in society but by the inability/refusal of a number of authorised definers or agents of signification (who may empirically be either men or women) to hear or listen to communications which are incongruent with professionally legitimated modes of expression about female conditions of existence. Consequently, the women are disqualified as speakers about their own condition and are, instead, strategically constructed as the programmable objects of professional discourses. Despite this, it has been argued that nondescript women are also those women who attempt to resist such construction by exploiting the contradictions of those discourses. Whilst much of that resistance is individualistic, inconsistent and self-destructive, it has the important effect of undermining the authority of official discourse and keeping open the possibility of the creation of new knowledge about these women.

Chapter One outlined the theoretical framework - that of discourse analysis - within which the process of knowing about female lawbreakers is located within this thesis. As opposed to dealing with questions of 'truth', this thesis has struggled with the process of signification and the position within that process of the speaking subject. A bricolage of concepts and analytical tools drawn from a number of writers was used to discover some of the criminal justice system's structural elements whence emanate the authorisation of claims 'to know' about, or to describe female lawbreakers.

The choice of methodology resulted from a concern to reject positivistic notions of truth as unchanging, monolithic and sovereign.

This concern led initially to a study of symbolic interactionism and its exposition of the development of the Self through the acquisition of language. However, symbolic interactionism's emphasis on consciousness and the normality of consistence, coherence, unity and integration in the adult personality failed to explain the ubiquity of contradiction and conflict in any terms other than those of individual pathology. Symbolic interactionism's inability to take account of personality as the product of social relations which are themselves the product of structural inequalities in society rendered the framework ultimately inadequate for the purposes of this study.

The importance of the contribution of structural linguistics to the study of social practices lies in the emphasis it places on the form, rather than the substance of signs (practices) and their relationship with each other within a system. By accepting that the relationship between what is described (the signified) and its description (the signifier) is inherently arbitrary, it becomes possible to explore how meaning is socially ascribed to that relationship, what rules govern the organisation of difference (that is, what is seen to distinguish the signified from the non-signified) and the effects of that organisation. It then becomes apparent that the freedom of the speaking subject to endow her words or actions with meaning is constrained. She is no longer the centre of meaning or knowledge. Words and actions acquire socially effective meanings which exist independently of the particular subject who uses those words or engages in those actions.

Since the speaking subject is thus 'de-centred' and no longer has an automatic right 'to know', the question is then 'Who has that right?'. The legacy of epistemology is the desire for sovereign thought. Consequently, those who, by reason of their social advantage, represent knowledge as 'an ideal, continuous, smooth text that runs beneath the

multiplicity of contradictions, and resolves them in the calm unity of coherent thought' (Foucault, 1972: 155) are authorised to define or describe those who, by reason of their social disadvantage, articulate only a broken, contradictory account of reality. By contrast, discourse analysis proposes that knowledge/power is a ubiquitous force which is generated continuously within the relations of the social body. Its project is to deconstruct (or unhitch the lack/desire couple which appears to render that which is absent present) sovereign or privileged description, demonstrating that not only do those discourses relate paradoxically to each other, but they contain within themselves discontinuities, ruptures, gaps, lacunae, which remain unspoken or, if spoken, always-already subordinate.

To ensure the infinite continuity of discourse, its boundaries have to be demarcated by practices of exclusion such as the prohibition of certain topics, the disqualification of certain individuals as speakers and the rejection of certain statements as illegitimate. Practices of exclusion ensure that certain definitions of reality are 'recognised' or designated as the 'truth'. This poses the epistemological problem of the relationship between ideology and knowledge, a problem which has been transformed by discourse analysis into one of recognition. Central to this process of transformation is the notion of contradiction. The search for continuity, consistency and rationale in the development of scientific knowledge has been replaced by 'a battle about the status of truth and the economic/political role which it plays' (Foucault, 1976: 14 - emphasis added). The abandonment of the battle to establish the truth opens the way for the reintroduction of the subject and an exploration of the way in which the individual is constructed through language so that she can act. At this point, it becomes possible to rehabilitate Freud, since the notion of the Unconscious becomes important

in understanding the role of ideology in the construction of self-image or identity.

For Mead, the moment of Self-recognition is a moment of acquisition. It is the moment at which the infant experiences herself as an integrated, unified whole. By contrast, for object relations theorists, the acquisition of language (the Symbolic) is a moment of loss, when the subject misrecognises herself. The price of the representation of an apparently unified self (the production of the Imaginary) is the denial of contradiction and the consequent splitting off or loss of the Other - those non-legitimated forms of lived experience which thereafter forever dictate the paradigms from which the speaker selects, in order to exert control over them. The relationship between ideology and knowledge can therefore be redefined as the relationship between the closure of the Imaginary and the inexhaustible creativity of the Symbolic. The production of knowledge becomes dependent on the maintenance of space between them.

The Desire (or unspoken goal) of discourse is the closure of that gap and the consequent ejection of the Other. This is achieved through programmes, technologies and strategies of power. Programmes presuppose a knowledge of the field of reality in which they intervene and render reality intelligible in the form of objects which are programmable. In this study, professional assessments are examined as programmes of power. Technologies are those mechanisms whereby programmes produce effects; in this study, the technology of muting is examined. Strategy is an opportunistic and expedient means of exploiting the social field of intervention; in this study, the concept of strategy is used to analyse professional practices.

The programmes, technologies and strategies by which the gap between the Imaginary and the Symbolic is conventionally closed serve to give

meaning or signification to the subject and her acts. Nevertheless, the subject does have some power to transgress. Negativity is the subject's (albeit discursively circumscribed) power to resist assumptions of homogeneity. The extent to which nondescript women actively defy (refuse) description is one of the central questions of this thesis.

Female lawbreakers are constructed as targets upon which power is inscribed and their lawbreaking activity is read as the property of a unified self. Statements about them which reinforce notions of essence and unity are privileged as authoritative; those which do not reinforce such notions are excluded as 'common sense'. The organisation of this distinction depends on the power of the agent of signification; assessment may be defined as that which is recognised as rendering the female lawbreaker 'normal' as either a woman or a criminal and as that which successfully controls the challenge of the Other.

Chapter Two indicated how a number of distinct yet interweaving discourses have attempted to lay claim to knowledge about troublesome women. Each discourse, characterised by its historical and physical setting, its code or mode of expression and its non-discursive practices, has sought to locate the 'not quite normal' woman within its own theoretical site. Each has drawn on fundamentally positivistic theories of female crime which have posited the existence of a homogeneous group of women who can be distinguished from other women by essential qualities other than their lawbreaking action - qualities which may be analysed ahistorically. These discourses may be summarised as follows:

1. Criminological

Theories of female crime have traditionally constructed the female lawbreaker variously as essentially unfeminine (that is, under-determined by her biology), essentially feminine (over-determined by

biology), role-playing (under-socialised), 'feminist' (liberated from normal social constraints) or feminist (victimised by man-made law). By contrast, a relatively new tradition of criminological discourse, within which this thesis locates itself, has sought to explore the specific experiences and circumstances which result in particular female lawbreakers being constructed as abnormal criminals and abnormal women. It seeks to bring to particular account those discourses which variously define female lawbreakers as born, socialised or victimised into crime.

2. Judicial

The unifying theme of existing literature on women offenders and the courts is whether or not they are treated more leniently than their counterparts. Evidence increasingly suggests that, when account is taken of the fact that women generally are criminalised for fewer and less serious offences than men, they are not subject to preferential or chivalrous sentencing. It has, however, been argued that concentration on the end product of sentencing masks other inequalities of treatment throughout the judicial process. In particular, the ideology of the family, which occupies a dominant position in court proceedings, results in considerable emphasis being placed on the domestic responsibilities of women. Additionally, courts have been advised to be specifically vigilant for any signs of mental disorder in women defendants. This thesis is about the negotiation by female lawbreakers of a space within which to define themselves and their actions. It explores the mechanisms which some women have employed to resist a total pitch invasion by a judicial discourse which recognises only those excusing conditions that are located and fixed within domesticity, sexuality and pathology.

3. Penal

Official rhetoric looks to the day when the imprisonment of women is a redundant practice. However, recent developments in the government's prison building programme and the steady increase in the numbers of women imprisoned over the past fifteen years do not suggest that such a vision has any foundation in reality. Women appear to cope less well with imprisonment than men and two explanations are offered for this. Firstly, it is argued that women withstand the stresses of prison life less well than men - that they are 'normal' women put under abnormal strains. Secondly, there is the view that women's prisons house only the most highly disturbed female lawbreakers who should, in an ideal world, be treated in a psychiatric hospital.

Despite officially expressed unease, the imprisonment of women would seem to serve a purpose of disciplining the behaviour of those women who have demonstrated that they are beyond the care or cure provided by welfare and medical professionals. But it has been argued that the 'caring society' is often a 'dismissive' one, not offering the care it professes. Whilst the women in this study have not yet been dismissed by that society, this thesis argues that the nature of the help they receive is often based on injunctions identical to those of penal discourse: 'discipline, medicalise and feminise' (Carlen, 1983).

4. Gynaecological

The realisation that the internal processes of the female body are crucial to, yet beyond the control of, men is something which provokes fear and a desire to contain, to limit and to punish. But the ideology of the 'normal abnormalities' of menstruation, pregnancy, childbirth and the menopause has become so effective in restricting women's perceptions of themselves and thus controlling their behaviour that it rarely needs

to be restated explicitly. Women who suffer gynaecological dysfunctions, or who reject the controlling influence of the reproductive cycle become problematic and potentially out of control. Some may find a solution which absolves them of responsibility for their behaviour by retreating into mental illness or vaguely defined sub-psychiatric conditions such as pre-menstrual syndrome or menopausal depression. Those who do not have the 'decency' to accommodate their biology in this way are subject to a more punitive discourse which involves explanations of sexual depravity, for which they themselves are considered responsible. This thesis attempts to identify the rules whereby behaviour is normalised through its reduction to biology. It is argued that the appeal to gynaecology as an excusing condition is characteristically available to the 'normal' (white, wealthy?) woman. The poorer woman may not have access to such an appeal but may, ironically, subsequently be defined as 'abnormally abnormal' - and therefore responsible.

5. Psychiatric

Official rates of mental morbidity are considerably higher amongst women than men. Traditional explanations of this difference assume that women are either inherently more predisposed towards mental instability, or are assigned social roles which are less satisfying and more stressful than men. Ironically, however, whilst women are readily diagnosed as suffering from psychiatric disorder, their treatment denies them the status of a sick person. This is demonstrated in the expectation that they continue to 'cope' with personal and family responsibilities. It is also demonstrated in the diagnostic category of psychopathic or personality disorder which is, by definition, often untreatable. Instead, a person so diagnosed is held responsible for her actions and deemed to need either social work intervention or a discipline setting.

Much has been written about the controlling nature of psychiatric discourse, but attacks on traditional psychiatry emanate from differing medical, moral and political interests, so that it is not possible to identify 'anti-psychiatry' as a unitary concept. Nevertheless, the traditions of the 'anti-psychiatry' schools and the historical/archaeological approach of Foucault have in common the attempt to make 'madness' a relative concept whose meaning is dependent on the specific conditions of time and place in which it is located. Relatively little attention, however, has been paid to the home and work environments which might be most relevant to an understanding of the construction of women's sanity and insanity. This thesis argues that it is only those women who are seen as basically powerless, safely gender-socialised and whose behaviour is perceived as of little social significance, who can be allowed the reduction of moral responsibility implied in the redefinition of their behaviour as 'disordered'. Psychiatric discourse accepts responsibility only for those female lawbreakers who can be constructed as dull and insignificant, but potentially coping.

6. Psychoanalytic

The discovery of the unconscious and its influence on the construction and organisation of sexuality has been used both to prescribe and proscribe the socialisation of women as wives and mothers. Feminists have both accused Freud of an ahistorical phallocentrism which reinforces the oppression of women and hailed him as identifying the myth which facilitates the ideology of masculinity and femininity. Of particular significance to the construction of femininity is the recognition by women that they are lacking (castrated) and that development into normal womanhood requires a transformation from active to passive sexuality and a transference of affection from mother to father. The 'normal' woman comes to believe that her own desires and

needs cannot be expressed other than through service to others - primarily men, but also children. Women are always already NOT MEN and the experience of being female is that of being not male. This absence of maleness is manifested in two opposing sets of expectations, revolving around the socially ambiguous status of dependence. Femininity is characterised, on the one hand, by self-control and independence and, on the other, by lack of control and dependence.

Feminist psychotherapeutic practice has provided the leverage for examining the association between being a woman and feeling inferior or abnormal in our society. Nevertheless, it has been argued that it has very little to say to women, like those in this study, who suffer very real economic and educational deprivation. This thesis argues that exhorting such women to cease to serve and to reclaim the conflict of sexuality, in the absence of appropriate material (not just emotional) support, is likely to lead to their construction within judicial and penal discourse as being in 'need' of a discipline setting.

7. Social Work

Social work discourse is very powerful because it is overseen by psychiatric discourse, reinforced by diffuse legal powers and has served the political programmes of both left and right wing governments. The traditional social work method of casework appropriates psychoanalytic theories and individualises social problems. People are poor and underprivileged because they are personally inadequate and the victims of defective upbringings. Social work seeks to remedy this by buttressing the nuclear family and, in particular, targetting the woman-as-mother as the key site of intervention. Social workers are authoritatively charged with monitoring standards of motherhood and with supervising women who, like those in this study, are seen to be deficient mothers. This requirement of domestic competence is

legitimised by a 'knowledge' of child psychiatry and role psychology which is claimed by privileged (predominantly male) professionals and mediated by (predominantly female) semi-professionals. These are the 'wise women' who, in addition to translating 'expert knowledge' into 'common sense' for the consumption of the always-already failing woman, also provide an authoritative role model of normal womanhood. The female client who challenges the state's definition of her and attempts to take control of her own life is labelled 'anti-authoritarian', 'aggressive', 'problem mother', or 'castrating'.

Radical social work writing has emphasised the political nature of social problems but, until recently, has shown little appreciation of women's oppression. Feminist social work has begun to emerge as a discourse which seeks to link the personal and the political by stressing the ambiguity of the family. It has begun to examine both the ways in which women's needs and problems are defined, and the criteria for the allocation of social work resources. One of the surfaces through which such an analysis emerges is the mechanism of 'consciousness raising' which has offered both female clients and female social workers opportunities to examine their experiences as women. The extent to which a feminist analysis of social work can directly inform social work practice and its organisation within statutory agencies remains, however, a matter for debate. Despite their powerlessness and vulnerability, women such as those in this study are often viewed as the perpetrators of harm to members of society who are even more vulnerable - namely, children. They are the women who appear to act with sufficient agency to exclude themselves from the category of the 'genuinely' powerless and victimised.

It has been argued that the unspoken Desire of the discourses outlined in this chapter - the search for the essentially normal woman -

has failed. The prescriptive descriptions of the discourses have failed to converge and there remains an unappropriated space in which this thesis has aimed to construct a new object of discourses - the Nondescript Woman.

Chapter Three introduced the fifteen women on whom this study is based. Official accounts of their circumstances and their lawbreaking were juxtaposed with their own accounts and the discourses within which attempts are made to construct them as 'normal' women were identified. It was demonstrated that the discourses outlined in Chapter Two overdetermine the pedagogic and pathologising dimensions of the routine descriptions of female lawbreakers. It was argued that the female lawbreaker is routinely offered the opportunity to neutralise the effects of her lawbreaking activity by implicitly entering into a contract whereby she permits her life to be described or re-presented primarily in terms of its domestic, sexual and pathological dimensions. The effect of this 'gender contract' is to strip her lawbreaking of its social economic and ideological' dimensions in order to minimise its punitive consequences. Whilst many female lawbreakers accept this deal and some reject it outrightly, there exists a group of women who appear to be on the margins of all categories and thus elude the controlling influence of prescriptive description. Furthermore, it was argued that, by exploiting the material and ideological conditions that are pre-conditional to this 'nondescriptiveness', this particular group of women resists the oppressive nature of stereotypical descriptions and prescriptions.

The fifteen women in this study were predominantly working class, poorly educated and living in conditions of poverty. Most had no income other than Social Security Supplementary Benefit and most, for various reasons, were bringing up children on their own. With one exception,

all the women were the subjects of Probation Service files. They had been assessed and classified, not simply in terms of their lawbreaking activity, but in an endeavour to 'make sense' of the multitude of 'facts' which constituted their official lives. Certain dimensions featured strongly in these official accounts, others were notably absent. Domesticity, sexuality and pathology were prominent; class and race barely mentioned. Yet the routine practice of interpellating female lawbreakers as domesticated, feminine and sick appeared to have been proved inadequate in relation to the women in this study in providing either explanations of their past lawbreaking activity or management of their future behaviour. These women had presented themselves variously as:

- a) suspect or non-mothers;
- b) indiscriminate and promiscuous women, unsupported and uncontrolled (or uncontrollable?);
- c) not mad enough or too mad, alcoholic and malingering.

The women who were interviewed described themselves in rather different terms. Most of them did not see themselves as 'real' criminals. They felt that what they had done was either not really criminal, was a kind of 'compulsion' or had been done out of economic necessity. In its strict judicial sense, they denied criminal intention, but they resigned themselves to pleading or being found guilty, partly because of their low self-esteem and generalised sense of guilt about being a woman and thus always-already failing, but partly as a result of being treated as though they were always-already guilty by judicial personnel. The following gender dimensions of the women's experiences in court were identified as:

- a) the particular social disgrace of being a woman criminal;
- b) the sense of guilt and low self-esteem which many women have about

themselves as women;

c) the apparent difficulty which many women have in communicating what they really want to say to (or getting listened to by) men in positions of authority in court;

d) the particular requirement that women who break the law must compensate for their 'unfeminine' criminal behaviour by presenting themselves as domesticated, sexually passive and constitutionally fragile.

In relation to this last requirement, the women described their circumstances rather differently from their official biographers. Those who were mothers saw their motherhood as being profoundly and inextricably bound up with their attitudes to their lawbreaking (rather than being incompatible with it). On the one hand, they saw their crime as being either an attempt to provide for their children, or as an attempt to draw attention to the intolerable pressure of losing children (through admission to Care or simply through their growing up and leaving home) or being treated with contempt by them. On the other hand, the fear of losing their children was, for some women, the biggest single restraining influence on their lawbreaking. Yet others were prepared to exploit what they saw as the reluctance of courts to imprison mothers. Husbands or partners were considered far less significant than children, being generally dismissed as unsupportive and, in some cases, the cause of the women's lawbreaking. They certainly did not accept any definition of themselves as promiscuous or indiscriminate in their sexual relationships. They were also reluctant to accept the 'sick role'. Despite having histories of involvement with psychiatrists, none of the women saw themselves as mentally ill and few felt they had benefitted from the 'treatment' they had received. (It was not therefore surprising that many had been officially redefined as 'personality disorders, not amenable to treatment'). Those who had

experienced forms of psychotherapy (with the opportunity to talk about themselves) spoke more positively of their treatment than did those who had experienced drugs, ECT or brief, curt 'consultations'. These latter treatments had been seen as alienating, confusing and humiliating. But the power of the psychiatrist both in the court and over social workers was recognised by the women. The psychiatrist's expressed willingness to offer treatment was seen as an important pre-requisite for obtaining a lenient sentence; his approval was also seen as crucial if the women were to retain the custody of their children.

It was argued that the discourses of femininity which together constitute the 'gender contract' have failed to describe the women in this study adequately. Instead, they only succeed in exerting any control over these women by rendering them muted. Within the criminal justice system, these women are muted by being subject to a formal justice which encourages self-expression but which they experience as a substantive injustice denying self-expression. In the male-dominated world of crime, women are immediately threatening and are likely to be labelled as failed women. The courtroom itself is a public and arguably 'masculine' arena where interaction must be audible, rationalisable and adversarial; the personnel most familiar with its workings are predominantly white, middle-class, professional and male.

From their own accounts, it was apparent that the women studied here experienced the criminal justice system as bewildering, degrading and unjust. Their attempts to cope with it were characterised by accommodation - by a mixture of self-blame and suppressed anger, translated into a variety of petty resistances and rituals which might be conceived of as either 'shifting the signs' (Foucault, 1975) of the gender contract with a degree of agency or, alternatively, as 'minor deviations....(which)....nurture the confined soul' (Ardener, 1978).

The mechanisms employed by the women to 'shift the signs' were identified as:

- a) Elusiveness;
- b) Making demands;
- c) Small scale pleasures: 'working', 'socialising' and 'helping yourself'.

It was argued that the consequence of this 'nondescriptiveness' is that women like those in this study are frequently placed under the supervision of probation officers because the Probation Service is assumed to be capable of accommodating nondescriptiveness. For probation has traditionally represented 'institutionalised ambivalence' in the criminal justice system and has positively encouraged courts to be uncertain (Millard, 1982).

Chapters Four to Seven examined the 'chain of signification' which results in the muting of nondescript women. Each chapter analyses the utterances of particular courtroom personnel. It identifies the origin of their authority to know and speak about female lawbreakers, the rules governing that speech, the programmes, technologies and strategies which circumscribe their practices, and the consequences of those official discourses for the women in this study. It is argued that these agents of signification acquire their privileged status within the courtroom from:

- a) the law itself and
- b) the differential class-based capacities of those agents.

Chapter Four deconstructed the discourse of magisterial common sense. The origin of magistrates' authority was located in the ideology of amateur justice which requires a minimum of legality and expertise. The safeguard against the naked class justice which might ensue from such an absence is the assumed existence of a quality which crosses all

barriers of class, age, race or gender - the quality of common sense. Magistrates appeal to common sense in order to account for their actions and, in so doing, they make assumptions about 'what everyone knows' to be self-evidently true. Common sense is portrayed as the safeguard of the criminal justice system, the champion of freedom, the check on expert power. But, far from challenging and transgressing expert discourse, it was argued in Chapter Four that magisterial common sense is a competing discourse of expertise, which confines, targets and programmes female lawbreakers. Under the guise of gender-neutrality, magistrates produce and safeguard consensus in relation to the processing of female lawbreakers by portraying legal rules as homogenous, unproblematic, external, inevitable, essential and external. Their discourse is characterised by three key myths which have important consequences for women defendants:

1. Through the process of self-disqualification magistrates simultaneously deny and claim authority for what they say. In fact, magistrates act 'as though' they have knowledge of women defendants, that knowledge emanating from cultural stereotypes of appropriate female behaviour and being reinforced by their own socially and discursively privileged personal life experience. The consequence for women defendants is that they are rendered always-already invisible, inaccessible and unknowable (yet forever known).
2. Through the invocation of the ostensibly gender-neutral concept of individual merit magistrates simultaneously generalise and deny the possibility of generalisation. The consequence for women defendants is that, though they are rendered intractably heterogeneous, magistrates can use this concept to justify treating women defendants qua women differently from men defendants, since meritorious conduct in men and women is differentially defined.

3. Through the privileging of personal life experience women magistrates simultaneously claim and deny similarity with defendants. The consequence for women defendants is that they are rendered like-yet-not like women magistrates. The judging of women by women magistrates is seen to be doubly authoritative because women magistrates can root their claim to an authoritative understanding of female lawbreakers in the claim that they themselves share in a biological experience common to all women without using it as an excuse to break the law. Thus biology (rather than class or race) is both hailed and denied as the prime determinant of the social construction of culpability and responsibility.

Chapter Five deconstructed the discourse of legal representation. The role of the solicitor was described as being to occupy the gap between the defendant's account and the magistrate's recognition of that account, negotiating the precise route whereby that gap is closed. The origin of solicitors' authority was located in the paradox of the common-law approach to legal reasoning which requires them to theorise at the interstices of legal rigidity and judicial flexibility. The unspoken goal (Desire) of this discourse is the 'normalisation' of the defendant through a process which packages and re-presents (renders programmable) the defendant as a coherent unity which is recognisable by the magistracy. This process consists of particular practices of inclusion and exclusion, governed by tacit rules that disqualify the defendant as a speaker, prohibit certain topics (specifically, poverty) or redefine them (as 'need') and reject certain explanations as illegitimate. These practices of professional assessment are justified by the perpetuation of the myth of client choice (illustrated by notions such as that of 'taking instructions').

The rules and definitions available to solicitors require them to

construct women in legal discourse in terms of their exclusion from 'male' categories of behaviour and motivation. One of the unique contributions of solicitors to the signification of female lawbreakers is their authorisation to recognise the guilty mind. Ostensibly a gender-neutral concept, the organisation of the guilt/innocence distinction has different meanings for men and women. Ideologically, many women experience a generalised sense of (moral) guilt consequent on their perception of themselves as failed wives and mothers. This perception predisposes some women to accept readily that certain of their specific actions can/should be defined as 'guilty' acts requiring punishment. This may be reinforced by a variety of material conditions surrounding a woman's appearance in court which influence her decision to plead guilty.

The process of normalising the female lawbreaker therefore consists of repackaging her story in such a way that her plea of guilty is received without discomfort by the court and her own account of events is reconstituted and muted. This involves defining the nature of the offence as 'normal' female crime, its motivation as a 'normal' female explanation (that is, need, greed or sickness) and its appropriate treatment as the 'normal' disposal for women (that is, probation). Solicitors experience some discomfort when required to consider explanations of sickness which relate to women's biology and prefer to avoid these unless the offence concerned is 'serious but natural' (that is, congruent with images of femininity) since such explanations present a challenge to the well-established jurisprudential concept of the 'reasonable man'.

Underpinning the ideological conditions governing the relationship between solicitors and female defendants is the economic condition of women's particularly precarious ability to pay for legal representation.

The readiness of solicitors to utilise 'off the peg', ready-made packages for female lawbreakers may be attributed as much to economic as to ideological considerations.

It was argued that solicitors construct female lawbreakers within the ideologies of domesticity, sexuality and pathology. Female lawbreakers are re-presented as family members, as sexual objects and/or as sick. Even those for whom such constructions bear no relation to reality cannot escape the power of these ideologies. Their only alternative, therefore, is to be constructed in terms of their exclusion from these 'socially exculpatory' and 'legally effective' categories (Edwards, 1984). The consequence of such construction is that they are perceived to be 'suitable' candidates for the disciplinary setting of custody.

Chapter Six deconstructed the discourse of forensic psychiatry. Legislation privileges psychiatry at a number of stages in the judicial process and authorises it to intervene in decisions about both the culpability and the management of offenders. But its powers are not mandatory and psychiatrists have no right of access to courts. They may speak only at the request of magistrates, solicitors and probation officers and what they say has to be expressed in a form which is recognisable within the discourses of magisterial common sense, representation and strategic working. That recognition is dependent less on their legal powers than on their ability to establish themselves in court more as 'wise men', willing to enter into a 'helpful collusion' about the organisation of the 'culpable/not culpable' and 'treatable/punishable' distinctions. That collusion involves turning on its head the notion of 'treatability' which features so significantly in recent mental health legislation. It was argued that psychiatrists have partially appropriated the paradigm of 'anti-psychiatry' whilst failing

to vacate the site of privilege which is an essential pre-condition of that discourse. They have claimed the right to redefine mental illness as 'problems of living' (Szasz, 1965) but have not simultaneously disqualified themselves as expert speakers. On the contrary, they have transferred their expertise to a competing discourse - that of social work/probation.

The relationship between psychiatry and probation is historically of long standing and the so-called 'psychiatric probation order' remains the most frequently used measure for dealing with mentally disordered offenders whose offences are of a relatively trivial nature. Yet the criteria for its use and non-use are far from clear and the inclusion (or not) of conditions of psychiatric treatment in probation orders made on female lawbreakers has been open to discourse analysis in this thesis rather than an already given characteristic of the women studied.

Two rules appear to govern the nature of the consultancy offered to the courts by psychiatrists:

1. The paradigm of mental illness from which the psychiatrist's terminology is selected, and
2. the extent to which the psychiatrist succeeds in redefining 'evidence' of sickness (which he accepts as being his domain) as 'evidence' of social need (which he ascribes to the domain of social work/probation).

It was argued that the women in this study have been muted by psychiatrists because they have been subject to a formal psychiatry which purports to be gender-neutral but which they have experienced as being substantively discriminatory for the following reasons:

1. By invoking the female domination of the official statistics of mental illness to demonstrate that even 'normal' women are prone to mental instability, those women who deviate from normal gender expecta-

tions by breaking the law are viewed as doubly prone to such instability.

2. By invoking a clinical paradigm of mental illness most psychiatrists are committed to the use of restricted and rigid categories of diagnosis which are frequently experienced as being incongruent with the lived realities of these women. Alternative paradigms which construct mental illness as the product of unresolved internal conflict (psycho-analysis) and/or problems of living (anti-psychiatry) are largely ejected from the site of assessment.

3. By invoking and then turning on its head the notion of 'treatability', psychiatrists claim authority to redefine evidence of sickness in these women as evidence of neediness. This is done in two particular ways. Firstly, those who deviate from 'normal' femininity are constructed as having personality disorders rather than being 'really' mentally ill. Secondly, those who suffer gynaecologically based disorders are redefined as being 'just' subject to a particular form of stress (which is itself deemed to be gender-neutral).

Consequently, it was argued that nondescript women fall both within and without the domain of psychiatry. Psychiatrists retain their authority to assess and judge them but they simultaneously deny responsibility for treating them. Despite this, they retain their oversight of those social workers and probation officers whom they then charge with the women's treatment.

Chapter Seven deconstructed the discourse of probation. The origin of probation officers' authority was located primarily in the legal status of the probation order as a measure to be used at the court's discretion instead of sentencing. According to Millard (1982), it is the mechanism whereby courts can institutionalise their ambivalence towards certain offenders. Of recent years, however, it has come to be used by the courts more frequently as an 'alternative to

custody' for 'high risk' offenders. A more recent source of authority for probation discourse is the legislation governing Community Service orders.

It was argued that the rules governing probation discourse are conflicting and result in a probation officers experiencing a sense of dissonance. The contradictions between the traditional rhetoric of 'advise, assist and befriend' and the modern rhetoric of 'alternatives to custody' produce moral, technical and operational dissonance (Harris, 1980). Attempts to ease this dissonance have resulted in the construction of several different models of probation practice:

- controlism, with its acceptance of the role of the Probation Service in making provision for the disciplined containment of 'high risk' offenders in the community;
- socialism, with its emphasis on 'oppositional and defensive' work and 'non-oppressive' help;
- separatism, with its emphasis on drawing a clear distinction between the caring and controlling elements of probation officers' work;
- occasionalism, with its emphasis on negotiation (with both court and offender), responsibility (of the offender for her/his actions and their consequences), informed choice (by the offender) and the abandonment of the medical model of treatment.

However, the consequence of dissonance for most probation officers is that they feel forced to work strategically. In order to get the 'best deal' for their clients in an imperfect judicial world, they accept that they may have to compromise their higher principles of justice and equality. Their authority thus becomes governed by the following rules:

1. The requirement simultaneously to recognise (in order to claim authoritative understanding of the offender) and deny (in order to make

'realistic' recommendations to the court) the conditions of social and economic disadvantage in which many offenders exist.

2. The requirement simultaneously to intervene (in order to prevent recidivism) and not to intervene (for fear of amplifying deviance through stigmatisation and thus failing to prevent recidivism).
3. The requirement simultaneously to care for the offender (implying an attempt to increase his/her choices in the interests of personal growth) and to control the offender (implying the restriction of choice for the protection of society).

Female lawbreakers are statistically over-represented on probation orders and under-represented on Community Service orders. They also appear to be placed on both types of order earlier in their 'criminal careers' than men.

It was argued that strategic working in relation to nondescript women is characterised by:

1. Recognition of the contradictory effects of the 'gender contract' which trap nondescript women in a paradoxical reality in which:

a) they are expected to be 'providers' for their families but are denied the material resources with which to provide in a socially and legally approved manner;

b) they are held responsible for any dysfunction within their families and also for bringing about positive change in those families. This means that, whilst they suffer the stigma of being the 'identified patient' or 'client', they are not allowed to enjoy the 'benefits' of being 'ill';

c) whilst they are expected to be stabilising influences on their wayward male partners, any attempt to reap satisfaction for themselves from these relationships is interpellated as 'abuse' of the relationship.

2. A sense of frustration/powerlessness, provoked by:

a) the apparently self-destructive contract avoidance behaviour of some women clients, which is characterised by apparent elusiveness, demands, deviousness and refusal, and

b) the apparent indifference of professionals, officials and politicians who are perceived to have the power to bring about effective change in the lives of these women;

3. an occasional sense of achievement when:

a) in the absence of an alternative discourse within which to work, the contradictions of the gender contract are exploited to the benefit of some women (through help in obtaining money and the alleviation of loneliness) or

b) some women are enabled to find non-self-destructive 'ways round' the gender contract (for example, voluntary use of specialist facilities, voluntary work and Community Service).

Chapter Seven concluded by recording that when probation officers were asked what they felt might ideally help the women with whom they were working, the range of responses was fairly limited. They included:

- home management assistance;
- survival skills;
- earlier intervention by helping agencies;
- a major political decision.

These suggestions are now considered in more detail and form the basis of the discussion, 'Implications for Practice' with which this thesis concludes.

IMPLICATIONS FOR PRACTICE?

'The best working strategy is to assume, for perfectly concrete sociological reasons, that most of the time there will be incongruence, lack of fit, contradictions, paradoxes.'

(Cohen, 1983: 127)

The aim of this thesis has been to provide a critique of the various discourses which lay claim to knowledge about female lawbreakers. It has been argued that the medical, judicial and welfare personnel whose job it is to assess, judge, defend, treat and punish nondescript women are confined by the ideological and material conditions of their jobs in the following ways:

1. Magistrates' discourse in general is constituted by the ideology of common sense and the material conditions of a privileged existence. Additionally, women magistrates are required simultaneously to claim (for the purposes of authoritative understanding) and deny (for the purposes of authoritative attribution of culpability) similarity with female lawbreakers.
2. Solicitors' discourse is constituted by the ideology of legal representation which requires solicitors to repackage female lawbreakers according to typifications of 'normal' women which can be discursively recognised by 'magisterial common sense'.
3. Psychiatrists' discourse is constituted by the ideology of forensic medicine, which requires and authorises psychiatrists to make wide-ranging medical, moral and judicial judgments of female lawbreakers in order to render them describable for the purposes of recognition by 'magisterial common sense'. At the same time, this ideology makes the women's eligibility for treatment both ideologically and materially dependent on a far narrower range of gender-stereotyped classifications.
4. Probation officers' discourse is constituted, on the one hand, by the competing discourses of magistrates, solicitors

and psychiatrists who, having failed to describe these women adequately within their own discourses, often reach consensus about the competency of probation officers to describe them. On the other hand (and simultaneously) probation officers' discourse is constituted within a social work ideology which requires and authorises them both to care for and control women as key figures of the nuclear family (whether or not the women are, in fact, members of such families).

Despite the complexities and contradictions of these competing discourses, their consequences for certain female lawbreakers are consistently and thematically oppressive. A recognizable (though not definable) group of female lawbreakers is therefore consistently muted for the following reasons:

1. Nondescript women are subject to multiple discursive oppression and knowledge about them is consequently subjugated to typifications of 'normality' articulated by 'experts'.
2. As speakers about their own condition, these women are disqualified because of their inability and/or refusal to articulate the paradigms of domesticity, sexuality and pathology which dominate explanations of their behaviour.
3. Nondescript women are strategically constructed by judicial, medical and welfare personnel as the programmable objects of discourse and then subjected to technologies which regulate their minds and bodies through power relations which are local and immanent. They are effectively offered a contract which promises to minimise the consequences of their criminality by rehabilitating them within the dominant

discourses of femininity.

4. Resistance to such description tends to be individualistic, inconsistent and, in some senses, self-destructive. Nevertheless, such resistance has the important effect of undermining the authority of official discourses and keeping open the possibility of the creation of new knowledge about them - both as women and as lawbreakers. By exploiting the contradictions in the material and ideological conditions that render them 'nondescript', these women are able to wrest a limited degree of power from the dominant groups by whom they are muted.

But critique has its limitations (Rose, 1987) and, as Cohen (1983: 126) argues, whilst we should not be deceived by appearances, neither should we be obsessed with debunking. This thesis has looked at the tellers of the tales - 'their distinctive structural position, vested interests, preferred language' (Cohen, 1983: 129) but, in so doing, has also attempted not to lose sight (or site) of the project itself. A considerable number of professionals co-operated with this research, at least partly in the hope of learning some ways of improving their practice with female lawbreakers. It would be of little comfort to them for me to say, 'I have discovered the contradictions in what you say, I have unearthed the rules and structures which explain why you say it, I have demonstrated its consequences for others, but ultimately you have no alternative because the discourses available to you allow you to speak and act no differently'.

Such pessimism about the possibility of change is not, however, wholly justified. To demonstrate the inextricable link between power and knowledge is not to imply that the only relationship that can exist between 'experts' and those they define is one of domination and

submission. The recognition that 'the power of expertise installs a new type of relation between authority and its subjects' (Rose, 1987: 74), coupled with an understanding of power relations as local and immanent allows for the possibility of a redistribution of power - albeit in an uneven and paradoxical fashion. Precisely because of the variety and competitiveness of expert discourses, it is possible to exploit contradictions and work strategically in ways which need not oppress. Because, as Rose asserts, 'pluralism is more than a myth' (1987: 73) it is possible for nondescript women to be empowered by experts, although the ways in which this can be done do not sit easily under ideologically 'sound' banners. For, as Cohen (1983) argues, one ideology can be used to support quite different policies and one policy can be supported for very different ideological reasons. There are no easy answers, but there are some difficult and compromising value decisions to be made by professionals at both an individual and policy level. Although these issues appear to fall primarily within the domain of probation officers, change cannot be effected by this group alone without compatible changes of understanding, attitude and practice by magistrates, solicitors and psychiatrists.

Agenda for Change

1. The strategic use of social inquiry reports as programmes of power.

The routine emphasis on the role expectations of 'normal' womanhood in reports on female lawbreakers disadvantages those women who are stereotyped in the following ways:

- a) The 'non'-mother or 'bad' mother.
- b) The 'tough' or 'bad' daughter.
- c) The non-victim of misfortune.
- d) The 'non-discriminating' and/or 'promiscuous' woman.

- e) The separated or divorced woman.
- f) The sexually unconventional woman.
- g) The 'not mad enough' woman with the personality disorder.
- h) The 'too mad' woman with the history of 'failed' treatment.
- i) The 'selfish' alcoholic or junkie.
- j) The gynaecological 'malingerer'.

How, then, can the stereotyping of women in reports be challenged without disadvantaging them further? Social inquiry reports are inescapably individualised documents and any attempt to take account of the social and economic disadvantage of whole classes of defendants is fundamentally incongruous with the project. Nevertheless, report writers could ask themselves two basic questions when preparing reports on women:

- i) Can I (and do I wish to) represent this woman as a stereotypically 'normal' woman? In answering this, it is necessary to consider not only the short-term benefits for this woman (for example, a 'lenient' sentence, the possibility of offering badly needed help immediately) but also the long-term costs for this woman (Can she fulfil the conditions of a probation order? What can be recommended if she reoffends?) and the costs for other women (Is the next woman client being condemned to prison because she may not be so 'normal'? What is being conveyed to the courts in general about 'women who offend'?).
- ii) Is there any alternative way of representing this woman which cuts across the stereotypes of domesticity, sexuality and pathology? Many motivational explanations of crime which are routinely accepted as 'legitimate' for men are still not so readily accepted for women. The myth that women who break the law do so for fundamentally different reasons from men pervades both 'chivalrous' and extreme feminist positions. The following explanations of crime should feature more significantly in

all reports (that is, in reports on women as well as men):

- poverty;
- social isolation/boredom;
- peer group pressure;
- rebellion;
- learned behaviour (that is, the behaviour based on experience

that crime has both obvious and less obvious rewards);

- immediate or long-term provocation (the latter being possibly more significant for women);

- lack of fulfilment and lack of access to legitimate channels of success;

- assertiveness (that is, an attempt to take control of one's life).

The making of recommendations in reports on women requires consideration of broader issues about what the Probation Service can and should be providing for women who appear before the courts.

Before moving to these considerations, two points need to be made in relation to the legal representation of women and their referral for psychiatric assessment. Firstly, probation officers should always ensure that women understand their right to representation and, if at all possible, have access to a sympathetic female solicitor. Although probation officers are not allowed to recommend specific solicitors, establishing informal links with local solicitors (both male and female) who are sympathetic to the kind of representation outlined here should be encouraged. Secondly, where they have the choice, probation officers should think very carefully indeed before referring any women for psychiatric assessment. This study suggests that there is very little which psychiatry has to offer most female lawbreakers which cannot be offered more effectively and in a less stigmatising fashion by probation officers themselves.

2. Deciding the moment of intervention.

As has been discussed in Chapter Seven, the debate about the relative merits of earlier or later intervention by welfare agencies is one which both extends beyond considerations of gender and has tended to ignore gender. It would be comforting to regard the insights derived from work on juvenile delinquency as being directly transferable to work with women. Undoubtedly many women have been placed on probation in the past for petty first offences because they are seen to be 'in need' and undoubtedly this has served to escalate them up the tariff into custody if they do reoffend. The development of policies which delay intervention by the Probation Service until second or even third court appearances must be welcomed, if only on a carefully monitored experimental basis. But that monitoring should explicitly include consideration of the availability of other less stigmatising resources in the community and the acceptability of these alternatives to the women themselves. As many critics of the decarceration movement have pointed out (e.g. Scull, 1983; Cohen, 1983) the ideal of community provision bears little relation to its reality and 'community care' frequently means no more than the shunting of deviants from the caseload of one agency to another. If this is indeed the case with female lawbreakers (as this study suggests), it may be necessary for the Probation Service to consider the unpalatable fact that women who break the law as a result of material, social or emotional need are not likely to receive help from any other agency or group than itself. In which case, the Service needs to consider how it can intervene, rather than delay intervention, in order to forestall the amplification of female deviance.

3. Deciding the nature of intervention

Intervention in relation to female lawbreakers must be considered on two broad fronts - direct provision for women by the Probation Service and policy campaigns directed at the judiciary, the medical profession and the government.

The current lack of direct provision by the Probation Service for those women who, by virtue either of the frequency of their lawbreaking or their failure to fit the stereotypes, are at risk of custody is totally inexcusable. There is no reason why any woman should go to prison unless the nature of her offence is so serious that the public either requires protection from her or needs to express its abhorrence of her actions. It is imperative that the Service gives urgent attention to separate provision for women in the following areas:

a) Day centre facilities. In particular, consideration needs to be given to running 'offence-focussed' groups for women, similar to those already running for men, to look specifically at the factors precipitating the decision to act criminally. The content of these would undoubtedly be very different for women and might involve assertiveness training and skills in working/campaigning with other women. It would be consistent with the spirit of this study for such provision to be offered on a voluntary basis rather than as a Schedule 11 condition of a probation order.

b) Community Service schemes. The potential of Community Service as an alternative to custody for women has been inexcusably neglected and such neglect has finally come to the attention of the Home Office (1986d) which, at a meeting in December 1986 with the Association of Chief Officers of Probation, expressed its concern about the relatively large number of women serving short custodial sentences and the very small proportion (3%) of Community Service Orders made on women. Provision for

school-hour working, creche facilities and all-female projects (which does not mean that the work itself has to be 'women's work') all need to be investigated seriously.

c) Communal living. Traditional probation hostels do not seem to meet the needs of many female lawbreakers because they are situated away from the communities where the women have their albeit limited social networks and/or because they tend to be run in ways which reinforce the very familial roles and relationships which they have sought, through their offending, to escape. Modest experiments which allow women to live together and/or share child care need to be encouraged by probation officers and, where necessary, negotiated with local Housing Departments. More radically, schemes which allow women to live together away from their children for a period (without the stigmatising process of being labelled as 'unfit' mothers) should be considered.

Direct provision by the Service for women who are not at risk of custody is more difficult to justify within the rhetoric of 'Alternatives to Custody'. Nevertheless, as this study has indicated, the efforts of probation officers, on a one-to-one basis, to obtain money for women clients, open doors to new opportunities for them and simply (though unfashionably) befriend them meets a need which is clearly expressed by the women themselves. Where those same women can be directed towards other, non-statutory, sources of help and support, this is obviously preferable for their self-esteem, but, in the absence of alternative provision, such work by probation officers should not be undervalued. It does, however, have its limitations and can only be justified in the long-term if it is coupled with pressure from the Service for broader social, economic and judicial reforms. It might be argued that probation officers can (and should?) legitimately campaign for all of the following reforms:

1. The increase of Supplementary Benefit and wage levels so that, whilst some may still choose to do so, no woman needs to engage in prostitution.
2. Universal nursery (and care for the elderly) provision, so that no woman need be prevented from working outside the home by domestic responsibilities, nor be dependent on such responsibilities as her only source of self-esteem.
3. Reforms of the system of fining and its enforcement, so that fines are always proportionate to income and more imaginative ways are found of dealing with default than by imprisonment.
4. Decriminalisation of certain petty offences which disproportionately affect women; for example, soliciting, television licence offences, failure to pay library fines.

Whilst all these projects would be of particular benefit to women, all would have equally beneficial results for men, who undoubtedly also suffer (different) injustices within the criminal justice system.

4. The need for training in sexism awareness and non-sexist practice.

Ultimately, discussion of the issues outlined above will be sterile unless those engaged in the discussion are prepared to examine the acquisition of their own gendered identities and the impact of their own life experiences on their attitudes and professional practices. It is at this point that the ideological and material conditions governing the experiences of the women in this study can be linked (or not) to the experiences of all women. The ideology of femininity defines the experiences of all women, but differences in material circumstances enable some women to resist the consequences of those definitions more successfully than others. Women probation officers, magistrates, solicitors and psychiatrists need to be encouraged to recognise what they have in common with each other and with women clients, defendants and patients. They also need to accept their differences and the limitations

of what they can offer. Likewise, male professionals need to be encouraged to explore the ways in which they might be able to empower women clients, defendants and patients by consciously resisting the reinforcement of the gender stereotyping of the behaviour of both men and women.

Finally, the fundamental object of this thesis has been neither to apportion blame to 'experts' for their 'failures' to encapsulate lawbreaking women in expert discourses, nor to 'celebrate' the women's resistances to those discourses as being essentially liberative. Rather, it has been to suggest how both 'experts' and women lawbreakers are struggling to make sense of the contradictions between formal criminal justice in particular and substantive social justice in general. The 'Nondescriptiveness' of certain female lawbreakers is one product of that struggle.

CHAPTER NOTES

CHAPTER TWO

1. Hereafter, the use of the terms 'offender' and 'offending' should be taken to refer specifically to 'lawbreaking' and not - unless otherwise stated - to offences against other non-criminal social norms. The term 'action' is used in relation to lawbreaking in preference to the term 'behaviour' because it is assumed that lawbreaking can only be conceptualised within a social context which gives meaning to physical behaviour and therefore needs to be distinguished from it. It is to the exploration of the nature and implications of that meaning for specific women in specific situations that this thesis is addressed.

2. Commenting in 1983 on a gathering (at which I was present) of female probation officers (some avowedly feminist) who were - barefoot in a heat-wave - discussing female offenders, a psychiatrist (who must remain nameless) said (jokingly, of course?), 'It's amazing how many aggressive women have second toes longer than their first!'

3. The Mental Health Act 1983 defines a psychopathic disorder as 'a persistent disorder or disability of mind (whether or not including significant impairment of intelligence) which results in abnormally aggressive or seriously irresponsible conduct' (s. 1 (2)).

'In practice, psychopathic disorder is not regarded as a specific clinical condition; rather the presence of the disorder is inferred from evidence of anti-social behaviour. Thus the definition is a tautological one in that it implies a disorder originating from anti-social behaviour, while purporting to explain the behaviour by the presence of the disorder. As a result the label "psychopathic" has been applied to a wide variety of people who have nothing in common except some sort of anti-social behaviour. There is no clear, consistent and rational distinction between offenders who are labelled psychopaths and sent by the courts to hospital and habitual offenders who are sent to prison without any psychiatric label.'

(Gostin, 1983: 3-4)

Under the 1983 Act psychopaths will only be admitted to hospital when treatment is expected to improve or prevent deterioration of his or her condition. The burden of demonstrating treatability (and thus controlling admission) will fall upon the hospital authorities.

CHAPTER THREE

1. At the time of these interviews in 1983, I was not myself as acutely conscious of racism as an issue to be considered in the treatment of offenders as I have since become and did not, therefore, raise it in any of my discussions. I now see this as an obvious weakness in the study.

2. Probation officers quoted in this thesis are identified by the same numbers throughout. The numbers appearing after quotations refer to the page numbers in Volume 2 of this thesis, which consists of transcripts of tape recorded interviews and other information from case files.

3. The day after the interview I went to court to hear Carol's case. She pleaded not guilty, but the outcome of the trial was a foregone conclusion. The only witnesses called were the store detective, the arresting officer and Carol. In his opening remarks, the prosecuting solicitor stated that 'The store detective recognised Miss McC' and the arresting officer, when reporting his interviews, used her first name, indicating familiarity. Carol herself, in her statement, had said, 'The store detective thinks I did it because I'm a shoplifter'. The defending solicitor made a brave attempt to direct the bench to the evidence of the case, claiming that 'past dealings' with his client had prejudiced the store detective against her, so that she was 'expecting an incident' and was interpreting all Miss McC's actions in that light. He later admitted informally 'I must say I've never argued before that the prosecution's case is so strong that it must be wrong!'. Carol was found guilty and the case was adjourned for Social Inquiry Reports.

CHAPTER FOUR

1. Most magistrates made an almost automatic link between fines and television licence offences and several expressed concern that women were discriminated against in respect of this particular offence, since they were often the ones at home during the day when detector officials called. Television was seen by magistrates as 'part of the family' and women tended to receive sympathy for what amounted to an additional domestic responsibility.

'A lot are women on their own - they need the television for company and just can't afford the licence - and we always ask if they are pensioners. We try to keep the fine down.'

(Magistrate 2 - female)

'A lot are women. Television is a necessity for single parent families.'

(Magistrate 4 - female)

'A lot are women but we hope the husband helps out with the fine.'

(Magistrate 6 - male)

See notes to Chapter Five for further discussion of this point.

2. There are no detention centres for women and very few attendance centres or Intermediate Treatment schemes; young women serving Youth Custody sentences are also frequently mixed with older women prisoners.

3. This relationship has been largely neglected by the literature about magistrates' courts, although two recent articles have intimated that it may have some special significance (Farrington and Morris, 1983; Dominelli, 1984). In both articles it is suggested that women magistrates may be less lenient than their male colleagues in their sentencing of

women and that this punitive disposition may be attributable to a sense of affront. Women who break the law, it is argued, are censured by women magistrates for their 'betrayal' of womanhood. I had not originally expected the sex of magistrates to be a factor of any significance in this study but the differing responses to women defendants of the eight women and four men interviewed suggested that it might be. Although the sample is very small, the interviews took place against my background of regular contact with magistrates during eight years of work as a probation officer.

4. In my experience as a probation officer, and during these interviews, I encountered few male lay magistrates who expressed blatantly sexist attitudes of the kind sometimes reported as being expressed by high court judges (e.g. Pattullo, 1983). Most erred on the side of chivalry. As one solicitor put it to me:

'They are the kind of men who still give up their seats to women - if they weren't, they wouldn't have got on the Bench.'

5. In an unpublished paper about her study of gender, the magistracy and sentencing practice in Leeds, Dominelli (1986) argues that women are underrepresented on benches, are 'relatively new to the job', and feel 'deskilled and disempowered' by being 'subjected to continuous scrutiny' by the 'Court-Establishment'. I think that this analysis is too simplistic. The process whereby women in court - both magistrates and defendants - are muted (Ardener, 1978) is a complex one and there is evidence from other arenas where women are the recipients of help, advice or services, that a simple increase in the numbers of women in positions of authority will not guarantee a better deal. As Dale and Foster (1986) observe, women entering traditionally male professions require tremendous courage and commitment to stand out against the barrage of institutional and cultural assumptions which face them.

CHAPTER FIVE

1. Sensitivity to gynaecological mitigations appears to be selective. Menopause and pregnancy may mitigate a shoplifting offence but not, apparently, a motoring offence, where women are regarded as asexual:

'Women motorists are treated the same as men....
There's not much difference in sentencing between men and women.'

(Solicitor 8)

Motoring is evidently a world which women must enter on men's terms or not at all. There may be a number of reasons for this. Magistrates' sentencing discretion is more restricted in this area and it is normal practice to standardise sentences in a particular court on a particular day, regardless of the characteristics of individual defendants. The same, incidentally, applies to television licence offences but the inequity of this practice is more readily acknowledged - possibly for the reasons indicated in the following table:

TABLE 5.1:
COMPARISON OF THE GENDER-RELATED DIMENSIONS OF TWO OFFENCES

OFFENCE DIMENSIONS	MOTORING	TELEVISION LICENCE
MATERIAL	Car ownership still assumed to be a status symbol of the relatively affluent, regardless of gender.	Now recognised as a 'necessity' for some of the 'deserving' poor (e.g. widows and isolated, many of whom are women).
IDEOLOGICAL	Motoring world is public and 'masculine' (e.g. images of speed, aggression, competition). Women constructed as dangerous intruders in this world.	Television is part of the private world of the home, where women's presence is legitimate.
MORAL	Moral culpability notoriously lacking. Therefore, less need to utilise women's 'sense of guilt'.	Despite trivial nature of offence, still seen as one involving moral culpability. Therefore, women's 'sense of guilt' relevant.

Economically, ownership of a motor car is still something of a status symbol and it may be assumed that car drivers, of either sex, are relatively affluent. Television, as we have seen in the previous chapter, is now recognised to be a necessity for some poor people - the widowed and others isolated through no 'fault' of their own. Ideologically, the world of motoring is part of the 'public' world, dominated by images of masculinity - speed, aggression, and competitive achievement. A woman enters this world at her peril, conforming to man-made standards, or being dismissed as 'a woman driver', whose femininity, far from constituting an excusing condition, is constructed as a physical danger to other (and, by implication, more legitimate) road users. By contrast, television is part of the 'private' world of the home, where a woman's presence is recognised as legitimate. Finally, motoring offences notoriously lack any element of moral culpability (witness the euphemistic redefining of manslaughter as 'causing death by reckless driving' and the consequent reduction of typical sentences). The need to induce a 'sense of guilt' is therefore perhaps less pressing and an appeal to gender-related sources of such emotions unnecessary. No such sense of moral neutrality appears to be attached to the absence of a television licence, despite the fact that it can surely be argued to

carry only the most tenuous of moral imperatives. The ironic consequence of these distinctions is that gender-specific mitigations may be perceived as relevant if a woman fails to ensure that her husband buys a television licence, but not if she fails to buy a road fund licence.

CHAPTER SIX

1. A case from my own work as a probation officer illustrates this point. A menopausal shoplifter, who otherwise would undoubtedly have received a conditional discharge, was persuaded by her solicitor to obtain a pre-court report from Dr. A, who recommended that she be placed on probation. There followed two years of embarrassment and humiliation for us both, while I (at that time being no older than her own daughter) visited her in her spotless middle-class home and imposed a psycho-analytic reading on her lawbreaking act, relating it to her 'sense of guilt' about letting down her kind, hard-working husband and her clever daughter who had just left home. This is not to argue that some women in those circumstances cannot benefit from being on probation, but that, by allowing the decision to be made by a psychiatrist, the 'help' that is offered and experienced is circumscribed by its mislocation within a discourse of pathology and treatment.

CHAPTER SEVEN

1. The following paragraph has been experimentally included in all Social Inquiry Reports on prostitutes written by some female probation officers in Greater Manchester:

'In the current economic climate there are few opportunities for women to improve their financial position above that of supplementary benefit. The levels of supplementary benefit are carefully fixed at a bare subsistence level and so any unforeseen or additional expense can lead to real hardship. Within, our experience, women today attempt to copy by any one or combination of a number of means such as: denying themselves necessities like food; formal or informal loans; missing payments for fuel or rent; or by involvement in some form of dishonesty. A substantial minority of women within this position choose prostituting, helping to perpetuate the existence of what is often referred to as "the oldest profession".'

(Gill Stewart and Elizabeth Hall, Women in NAPO,
1985 unpublished)

2. The hostel catering for women with children cited three further reasons for their low level of referrals:

1. Co-ordination with and persuasion of Local Authorities regarding children in Care.
2. Persuasion of relations caring for children to allow the mother responsibility for the child.
3. Co-ordination with Court hearings.

METHODS APPENDICES

APPENDIX I

METHODS APPENDIX I

Introduction

The interviews on which this thesis is based constitute a case study. The term is used here to mean a detailed examination of material (in this instance, statements about attitudes and practices relating to a particular group of female lawbreakers) which I believe demonstrates the operation of a general theoretical principle (namely, the power of discourse). The selection of interviewees was not random, nor is it claimed that those selected were necessarily representative of the wider population of their profession or status. They were chosen not in the expectation that their statements would be typical, but that they would provide compelling illustrations of (or challenges to) my theoretical propositions.

The justification for this methodology is rooted in the particular approach to the question of 'generalizability' which has been implicit throughout the thesis. Generalization through probability theory has been rejected in favour of generalization through theoretical production. I have not sought to argue that I have found sufficient examples of the coexistence or correlation of two or more characteristics in my sample to justify asserting their coexistence or correlation in a wider population. I have not, for example, argued that, because the majority of the magistrates in this sample claimed to have little experience of dealing with female defendants, it is therefore probable that most magistrates would make a similar claim. I have argued instead that such claims illustrate the theoretical construct of 'self-disqualification' - a construct which I believe capable of offering some insight into the attitudes and practices of magistrates. I have then attempted to identify the specific ideological and material conditions necessary for the production and reproduction of such a construct.

The validity of such an approach depends on the logic of its conceptual relations and on its basis in an articulated theoretical framework (in this instance, that of discourse analysis). As Mitchell (1983) has argued, the inferential process involved in extrapolation from individual case studies is one of analytic rather than enumerative induction. (Nevertheless, as he points out, much confusion has arisen because of the misconception that extrapolation from statistical samples can dispense with such logical inference.)

It is not the purpose of this appendix to argue that the methodology used in this thesis is better than its alternative, but that it is valid and appropriate to the data studied. The adoption of a case study approach has allowed an examination of some depth and subtlety and has facilitated the cross-referencing of statements. It has been possible (albeit to a limited extent) not only to compare the views of interviewees in relation to the general issues of this study, but also, more concretely, their views of each other. This has produced an important multi-perspective dimension to the study. Further, it has not been necessary to accept or dismiss the statements of interviewees respectively as either universal 'truths' or idiosyncracies. Rather, they have been regarded as opportunities for the critical analysis of the social, political and economic context which makes such statements both possible and ineluctable. Researchers, as Taylor (1979) has argued:

'....do not regard the remarks they collect and typify as constituting some essential truth: they are rather impelling rhetorical statements which, when collectively evaluated, can be seen to derive their persuasive potency - that is, their situational truth - from their context, from the often complex, overlapping, ironic relationships which they bear to other culturally "true" vocabularies of motive.'

(Taylor, 1979: 153)

Method

For this study, I gathered a number of statements from the following sources:

1) Interviews with the following 60 people who had experience of working with women lawbreakers:

- 29 Probation Officers (working in probation offices, hostels and prison)
- 9 Solicitors
- 12 Magistrates
- 7 Psychiatrists
- 4 'Miscellaneous' individuals e.g. a psychiatric community nurse, an ex-prison officer, a couple of court clerks.

2) Interviews with 11 female lawbreakers subject to probation investigation, probation orders or community service orders, 9 of whom had also experienced psychiatric assessment or treatment.

3) Notes from the case records of these, and other, female lawbreakers, made available to me by probation officers.

This is how I collected statements analysed in Part Two. I approached approximately 100 people; the ways in which I approached them and their responses are explained below.

a) Probation Officers

I was given permission by the Chief Probation Officer of Staffordshire to approach any staff within two Assistant Chief Probation Officer areas (there are four in all in Staffordshire) - one entirely urban and one a mixture of the urban and rural. I examined the statistical returns for these two areas for the month of August 1982 (the most recent statistics available when I began my research) and identified those probation officers who carried either any cases of women subject to probation orders with psychiatric conditions or four

or more women subject to supervision of any kind of criminal offences. I supposed (not always correctly!) that officers in the latter category might have a particular interest in working with women lawbreakers, since there is at least some element of choice exercised by officers in selecting their own cases. A total of 37 officers fell into those categories (out of 62 in those areas). Letters (see Appendix II) were sent to all 37 and 28 agreed to be interviewed. One additional officer sent written comments in reply to my letter. Of the 28 interviewed, 3 did not wish to be recorded on tape but the remaining 25 agreed to this also.*

I also contacted probation officers working in five hostels catering for women and two women's prisons in the region. I received positive responses from three hostels and four officers working in prisons. Interviews with probation officers varied in length from 30-90 minutes. (In respect of one interview in a women's prison, I was restricted in the questions I could ask and had been refused permission to discuss specific cases. This indicated to me that any request for access to prison officers, had I desired it, would almost certainly have been refused.)

b) Magistrates

Access to magistrates was obtained through the good offices of a friendly magistrates' clerk with whom I had worked in the past. He identified for me a total of 18 magistrates who were members of a local Probation Committee and had attended a meeting which I had addressed on the subject of 'Female Offenders'. Letters (Appendix II) were sent to all 18. Of these, 4 sent written comments in reply and 8 agreed to be interviewed. None of these interviews was tape recorded. Two of them took place in workplaces, where taping would not have been possible.

* The transcripts of most recorded interviews are available in Volume 2; some were of too poor a quality to be transcribed in full, and notes were taken from replays of these.

The rest were conducted in homes, where 'serious' discussion was interspersed with 'chit-chat', coffee, lunch and visitors; a request to tape would have seemed almost discourteous, I felt.

c) Solicitors

I wrote to 9 solicitors, with whom I had worked as a probation officer (Appendix II). Of these, 2 sent written comments in reply and 6 agreed to be interviewed. Only one interview (with the only female solicitor) was taped. One of the other interviews was conducted over an expenses paid lunch, whilst the other interviewees impressed me as either too intimidating or too intimidated to be asked!

d) Psychiatrists

I wrote to a total of 8 consultant psychiatrists, some known to me from previous contact in the Probation Service and some recommended to me by other interviewees. I had not expected a positive response from this group and was therefore pleasantly surprised when one sent written comments and 6 agreed to be interviewed. Of these, two specialised in forensic psychiatry and the remaining 5 were general psychiatrists. Of the 6 interviews, 3 were tape-recorded, one declined to be taped and the remaining two were not asked, because I was clearly being 'fitted into' a busy day and interruptions were likely to be frequent.

e) Miscellaneous Interviews and Contacts

A small number of other interviews were conducted and contacts attempted. A psychiatric community nurse working with an interviewed probation officer agreed to give a tape-recorded interview. Two psychiatric nurses working in a women's prison agreed to be interviewed during my visit. Three magistrates' clerks agreed to be interviewed (two of them in a joint interview). A letter placed in a local

newspaper (Appendix II) produced a response from an ex-prison officer (female) as well as an ex-offender (see below). A letter placed in 'Probation Journal' (Appendix II) produced replies from three interested serving probation officers but, unfortunately, follow up questionnaires were not returned. Finally, I interviewed the organiser of a voluntary counselling service for women charged with shoplifting.

f) Female Lawbreakers

The only realistic way of gaining access to this group was through their probation officers; (a letter in a local newspaper elicited only one response). At the end of each interview with a probation officer, I discussed the possibility of interviewing one or more of the women they had discussed. I had prepared a letter (Appendix II) which I asked the officer to give to the woman concerned, explaining the purpose of my research and inviting her to be interviewed. She could return the letter either directly to me or via her probation officer. I offered to see her at home or at a probation office and assured her that her probation officer could be present, or not, as she wished. If s/he were not present they would not be told about the details of the interview.

During interviews, it became clear that a number of officers did not want me to interview their clients. Reasons commonly given were about practicalities ('It's difficult to pin her down'), recent crises ('She's in a real mess at the moment and won't want the pressure'), ignorance ('She wouldn't understand who you are or what you're doing') and relationships ('She's very suspicious'). It was perhaps understandable that 'recommended' clients were those with whom the officer felt s/he had established at least an element of rapport and trust. It takes more than a little courage to expose to 'scientific' gaze those relationships where mistrust, hostility and disappointment seem to be the overwhelming characteristics. I was also sensitive to the fear (tactfully

unexpressed) that I might ruin carefully worked-at relationships.

In the event, 15 women were identified as 'appropriate' but only 10 were eventually interviewed (plus the one who responded to the newspaper letter). Of the remaining 5, two failed to keep appointments (one on two occasions). In the other 3 cases, the officers, after initially agreeing to approach the women, later felt they could not do so because of 'new crises'. Of the 11 interviews finally conducted, 8 were tape-recorded. One of the remaining interviews was conducted in a cafe, one on a hospital ward and one in the unavoidable presence of other people who were not fully aware of the purpose of my visit but would have become very suspicious if I had produced my tape recorder!

In total, then, I conducted 71 interviews, ranging in length from 15 minutes to 2½ hours. Of those, 41 were tape-recorded, and 31 later transcribed. Notes were made at the time of, or very soon after, the remaining 30. In addition, 8 people sent written comments in reply to my letters. 24 people either declined to be interviewed or failed to respond to my request.

A P P E N D I X I I

University of Keele

LETTER TO WOMEN

Keele, Staffordshire, ST5 5BG

Telephone: Newcastle (Staffs) (0782) 621111
Telex: 38113 UNKLIB G

Department of Law

Dear

I am writing to ask if you would help me with some research I am doing at Keele University. I am talking to women who are on Probation, or Community Service Orders, to see what they expected to happen when they went to court and what they think about what has happened to them since then. Mr Kosh has given me permission to write to you but if you do not want to take part in this research, that is entirely up to you - it will not affect your Community Service reports. However, if you do agree to see me, I understand that the time you spend will be counted towards your Order.

If you are prepared to help me, please complete the slip below and give it to Mr Kosh. I will meet you at your nearest Probation Office or at your home and there will not be anyone else present, unless you wish. Anything you tell me will be treated confidentially.

Thank you very much for reading this letter.

Yours sincerely,

Anne Worrall

.....

I am willing to help with your research.

You may see me at _____ Probation Office, or at my home
(cross out whichever does not apply)

The most convenient times to see me are:

Signed

Address

University of Keele**LETTER TO MAGISTRATES**

Department of Law

Keele, Staffordshire, ST5 5BG

Telephone: Newcastle (Staffs) (0782) 621111
Telex: 361113 UNKLIB G

Dear

The Deputy Clerk to the Justices, Mr.A' , has kindly given me your name, as I understand that you attended a talk I gave in September last year on "Female Offenders". I believe I mentioned then that I am continuing my research into this subject as a postgraduate student at Keele. I have been interviewing a number of Probation Officers, solicitors and women offenders, but would be most grateful to hear the views of magistrates who have some experience of dealing with women.

I am wondering, therefore, whether you would be prepared to spare me a little time (15-30 minutes would suffice) to discuss any, or all, of the following questions:

1. In your experience, are there particular problems associated with trying and sentencing women?
2. In your experience, would you expect Social Enquiry Reports and Psychiatric Reports to play a greater or lesser part in sentencing women than men?
3. In your experience, do courts treat women more or less sympathetically than men, or does it vary - in which case - how?

I am available to come and see you most days between 9.30 a.m. and 3.30 p.m., but I appreciate that this may not be the most convenient time of day for you. If it is more convenient, I would be happy to "catch" you in a free moment at the Magistrates' Court, or, alternatively, I would be grateful for any written comments on the above points. Obviously, any views you feel able to express would be treated confidentially.

I enclose a stamped addressed envelope for your reply. Thank you for considering my request.

Yours sincerely,

Anne Worrall

University of Keele**LETTER TO SOLICITORS****Keele, Staffordshire, ST5 5BG****Department of Law****Telephone: Newcastle (Staffs) (0782) 621111
Telex: 38113 UNKLIG G****Dear**

I am a former Probation Officer, currently undertaking postgraduate research at Keele University into "Community Provision for Female Offenders". I have interviewed a number of Probation Officers and women clients, but would be most grateful to hear the views of some members of the legal profession and the judiciary who have experience of dealing with women.

I am wondering, therefore, whether you would be prepared to spare me a little time (15 - 20 minutes would suffice) to discuss any, or all, of the following questions :

1. In your experience, are there particular problems associated with prosecuting, defending or sentencing women ?
2. In your experience, would you expect Social Enquiry Reports and/or Psychiatric Reports to be prepared on women more or less frequently than on men ?
3. In your experience, do Courts treat women more or less sympathetically than men, or does it vary - in which case - how ?

If you feel unable to see me, I would be most grateful for any written comments. Obviously, any views you feel able to express will be treated confidentially.

Thank you for considering my request.

Yours sincerely,

Anne Worrall

University of Keele**LETTER TO PSYCHIATRISTS****Department of Law****Keele, Staffordshire, ST5 5BG****Telephone: Newcastle (Staffs) (0782) 621111
Telex: 36113 UNKLIB G****Dear**

I am a former Probation Officer, currently undertaking postgraduate research at Keele University into "Community Provision for Mentally Disordered Female Offenders." I have interviewed a number of Probation Officers and women clients, but would be most grateful to hear the views of psychiatrists who have experience of preparing reports on female offenders for course and undertaking treatment of women subject to court orders.

I am wondering, therefore, whether you or any of your colleagues would be prepared to spare me a little time (15-30 minutes would suffice) to discuss any, or all, of the following questions:

1. In your experience, are most of the women on whom you are asked to prepare court reports suffering from treatable mental disorders?
2. In your experience, are court orders for psychiatric treatment (in-patient or out-patient) ever made against your recommendation or without consulting you? Is there any difference between men and women in this respect?
3. In your experience, are there particular problems associated with treating people subject to court orders? Is there any difference between men and women in this respect?

I appreciate that your time is valuable and I would be prepared to see you at any time between 9.30 am and 3.30 pm. If you feel unable to see me, I would be most grateful for any written comments. Obviously any views you feel able to express will be treated confidentially.

I enclose a stamped addressed envelope for your reply. Thank you for considering this request.

Yours sincerely,

Anne Worrall

University of Keele

LETTER TO PROBATION OFFICERS

Department of Law

Keele, Staffordshire, ST5 5BG

Telephone: Newcastle (Staffs) (0782) 621111
Telex: 36113 UNKLIB G

Dear

You may be aware that I am currently undertaking research at Keele University into community provision for adult female offenders. I see from recent County statistics that you have a number of women on your caseload and I am wondering whether you would be prepared to allow me to interview you about them. I am particularly interested in any women who have, at any time, been diagnosed as mentally disordered (especially) but I would also like to ask you some general questions about your work with women. If you can spare me some time (about 30 minutes), perhaps you would be kind enough to return the slip below, giving two or three alternative times that are convenient to you between now and If you feel unable to spare this time, I would be most grateful if you would be prepared to complete the attached questionnaire.

If you have any further questions, I can be contacted on the above telephone number (Mondays are best) or on in the evenings.

Thank you very much for your co-operation.

Yours sincerely,

Anna Worrall

.
I shall be available for interview

on 1.	at	am/pm
or 2.	at	am/pm
or 3.	at	am/pm

I do/do not object to this interview being tape-recorded (strictly for the purpose of research).

Signed

Address

.

.

Can you help?

I AM conducting research into the kind of help which is available to women who commit criminal offences.

I would be very interested to hear from any woman who has committed an offence while under some kind of stress and who would be prepared to tell me about the help she received (or did not receive) from probation officers or social workers.

All information will be treated in the strictest confidence.

Mrs ANNE WORRALL
Department of Law
(Criminology)
University of Keele

STAFFORD AND STONE

NEWSLETTER

FRIDAY MARCH 18 1983

PROBATION JOURNAL

VOL. 29 NO. 3

SEPTEMBER 1982

Female Offenders

Dear Sir,

I am a former probation officer, currently undertaking postgraduate research into community provision for female offenders. I would be interested to hear from probation officers and social workers, working with female offenders in any setting, who could give me information about existing provision or who would like to express concern about the treatment women receive from the courts and the caring agencies.

I would not ask for detailed information without obtaining the permission of the Chief Probation Officers concerned, but would be grateful to hear from anyone who would be prepared to assist me in this research.

Yours sincerely

ANNE WORRALL

Dept of Law, University of Keele,
Keele, Staffs

QUESTIONNAIRE FOR PROBATION OFFICERSQUESTIONNAIRE RELATING TO COMMUNITY PROVISION FOR ADULT FEMALE
OFFENDERS DIAGNOSED AS MENTALLY DISORDERED.

A. These questions relate to any female offender currently on Probation with a condition of psychiatric treatment (inpatient or outpatient.)

A1. Please state this woman's age, offence and number of previous convictions.

A2. Has she been on Probation before or known to Social Services?

A3. Has she received psychiatric treatment before?

A4. Can you tell me why a condition of treatment was included in this Order?

A5. Can you tell me what treatment this woman has received and what her response has been to it?

A6. Do you feel that this woman could or should have been dealt with in other way?

A7. Any other comments?

B. These questions relate to any female offender currently on Probation without conditions or under any other supervision (including through-care) who has any history of hospital psychiatric treatment (inpatient or outpatient.)

B1. Please state this woman's age, offence and number of previous convictions.

B2. Has she been on Probation before or known to Social Services?

B3. Can you tell me why psychiatric treatment was not ordered in this case?

B4. Do you feel that this woman could or should have been dealt with in any other way?

B5. Any other comments?

NB If you have more than one woman who fits into these categories, please include as many as possible, depending on your time and interest!

Thank you for your co-operation.

Please return to:

Anne Worrall,

Department of Law,

University of Keele,

Keele, Staffs, ST5 5BG.

INTERVIEW SCHEDULE FOR PROBATION OFFICERS AND SOCIAL WORKERS

I am interested in finding out how Probation Officers and Social Workers feel about their women clients - do you have many on your caseload?

How did they come to be under supervision?

What have you been doing to try and help them?

Have you had to contact other agencies for them? (Doctors, DHSS etc.)

What have been these other agencies' attitudes towards them?

Have you wanted to obtain specific services for them? (Jobs, money, housing, nursery places etc.)

Have you had any problems in obtaining these services?

Do you think that this is the right agency to deal with the women you have mentioned?

Do you think that women clients, in general, present any special problems for Probation Officers or Social Workers?

Do you have any woman on your caseload who has given you particular problems? Could you tell me about her?

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